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WORLD CONSTITUTIONS

CONSTITUTION OF ENGLAND

Q. 1. "In England the constitution—there is no such thing." (Tocqueville.) (Nagpur 1944, 43 ; Punjab 1935).

Ans. English Constitution defined.

"In England the constitution—there is no such thing." So remarks Tocqueville, a Frenchman in the spirit of Paine, the famous philosopher of the American Revolution, who argued that where a constitution cannot be produced in visible form there is none. An American student likewise created a scene in a great London Library when he was given to understand that a copy of the British Constitution is not available. Contrary to the French and the American views the Englishmen hold that they live under the oldest constitution of the world. Both are justified in their assertions.

The fact is that the word constitution is used in two different senses (a) a written instrument of fundamental law which outlines the structure of a governmental system, defines the powers of the governing bodies and officers, enumerates and guarantees the rights of citizens and perhaps also lays down certain general principles and rules to be observed in carrying on the affairs of the State. This is the American and the French view of the term constitution ; (b) to denote the whole body of laws, customs and precedents, even partially or even not at all written, which determine the organization and working of a government. In the latter sense there is—"it need hardly be affirmed" points out Ogg, "an English Constitution—as one which is at once the oldest and the most influential of all constitutions of our time."

The English constitution is a mass of statutes, law, common law, precedents, conventions and understandings. Prof Munro thus defines the English Constitution, "It is an infinitely complex amalgam of institutions, principles and practice; it is a composite of charters and statutes, decisions, precedents, usages and traditions. It is not one document but thousands of them. It is not derived from one source but from several.

The Elements of the British Constitution.

Lord Bryce has described the English Constitution as a 'mass of precedents carried in men's minds or recorded in writing, of dicta of lawyers or statesmen, of customs, usages, understandings and beliefs bearing upon the methods of Government together with a certain number of statutes....."

From this the following elements of the British Constitution emerge:—

The Constitutional Land marks.

These are in the words of Ogg "solemn engagements which have been entered into at times of national crisis between parties representing conflicting political forces." Such constitutional landmarks are such as Magna Carta of 1215, the Petition of Rights of 1628, the Bill of Rights of 1689, the Act of Settlement of 1701, the Act of Union of 1707, the Great Reform Act of 1832, the Parliament Act of 1911 and the Irish Free State Act of 1922. But these laws only cover a small fragment of the whole ground.

Statutes. *(Laws) passed by Parliament*

Secondly, there is a large number of statutes which the parliament has passed from time to time in order to add or modify governmental powers and procedure. These range over many centuries. These deal with such things as the suffrage, the Methods of Election, the duties and powers of public officials, the rights of man and the routine and methods of Government. Such statutes are Habeas

Corpus Act of 1679, The Act of Settlement of 1701, The Septennial Act of 1716, The Reform Act of 1832 and 1867, the Parliamentary and Municipal Elections Act of 1872, the Parliament Act of 1911, the Representation of the People Act of 1918 and so on and so forth.

The Common Law.

The third component element of English constitution is the common Law. Ogg defines the common law as "a vast body of legal precept and usage which through the centuries has acquired binding and almost immutable character." The common law has grown apart altogether from any action of parliament. It has its sanction in time-honoured customs. The rules of the common law have not been reduced to writing except in so far as these are contained in reports, legal opinions and informal decisions of the courts. These have secured personal liberties in England greatly. Trial by jury in the criminal cases is an example of the common law. Munro points out that "the common law like statutory law, is continually in process of development by judicial decision."

The Judicial Decisions.

The fourth element of the English Constitution is the judicial decisions. These have nourished the constitution in so far as they have interpreted and explained the scope and limitations of various charters, statutes, etc. The decisions relating to the prerogatives of the Crown, the privileges of the members of the parliament etc. are examples on the point.

The Conventions of the Constitution.

They are in the words of Prof. H. S. Chatterjee "the unwritten rules of political ethics sacred as law but not enforceable by the courts." These political customs or usages which are scrupulously observed are named by Prof. Dicey as 'the conventions'. The conventions as pointed out by Ogg, "consist of understandings, practices and bits which alone regulate a large portion of the actual relations and operations of the public authorities."

They include such usages and practices as the Ministry must resign when it loses the confidence of the House of Commons, the king must assent to any bill passed by both houses of the parliament, the leader of the majority party is to be appointed by the Crown as the Prime Minister and so on.

Q. 2. According to Sir Maurice Amos, the English man is conservative, tradition loving and illogical. How far are these traits of the English character traceable in the English Constitution ?

Ans. Montesquieu, the celebrated French writer, maintained that the political institutions of a country are essentially influenced by the geographical conditions and temperament of the people. The English Constitution stands a clear testimony to what Montesquieu had said. The insular position of Great Britain from the mainland of Europe has afforded her a measure of defence which no other great country or Western European country has enjoyed. It is by far the most important clue to a proper understanding of the constitutional history. The undisturbed political evolution of England has been due to the genius of her people. Both these characteristics had secured the country from political upheavals of a catastrophic nature. In reality all political revolutions in that country had been of a conservative nature. England has moved along an essential continuous constitutional pathway, re-adjusting her institutions slowly, and cautiously to the changing conditions. It has never moved forward by a succession of sudden leaps as France has since 1789. On the contrary, in England "transitions have as a rule been so gradual, deference to traditions so habitual and the disposition to cling to accustomed names and forms, even when the spirit has changed, so deep-seated, that the constitutional history of Britain displays a continuity hardly paralleled in any other land." One may say that in the English Constitution, past conspicuously runs in the present and the present goes deep in the future.

The reason is obvious. An English man has never had much use for political abstractions. He has never favoured a system of Government based upon fixed principles involving the application of exact rules. He is matter of fact by nature and so are his political institutions. He knows no logic and the English Constitution lacks all logic. Expediency rather than logic, needs of the time rather than quibbling for the future, and conservatism rather than radicalism had been the course of the development of the English Constitution. It is for this reason that the English Constitution remains unsystematized, uncoded and to a degree indefinite." And it is for this reason, too, that antiquity finds so prominent a place in its working even today.

The best illustration of it is the English King. It is true that the English King of today and his Government is not what it was during the times of William the Conqueror, George III or even Queen Victoria. There is no divinity which surrounds the Crown now. He had now long ceased to be a directing factor in government and he performs no official act on his own authority. But in theory the government is His Majesty's Government. In his public utterances the King-Speaks of "my government" and all the Britishers are the loyal subjects of His Majesty. The ministers are appointed and dismissed in the name of the King. All these expressions are the survival of ancient usages. These do not refer to the exercise of any actual authority by His Majesty. "The substance of power has departed, leaving only the shadows behind." In spite of all this the monarchy persists and the Englishman's adoration of this political institution which speaks for their conservatism.

Similarly, the House of Lords did not come into existence because of the uses of bicameralism. It was an accident of the time which was responsible for its creation. It is composed of hereditary peers and it enjoys coequal powers, subject to the limitations of the Reform Act of 1911, with the House of Commons. But actually the House of Lords has never interfered with the doings of the lower house. Its powers are now a sleeping beauty. The

hereditary composition of the House has been severely criticised and the popular slogan is that the House of Lords is out of tune and it should, therefore, be abolished. There have been moves to mend it and even to end it. But no party in power, including the Labour party has made a serious effort to end this historic institution and its hereditary character still continues, though the powers of the House have been considerably curtailed. The peerage cannot be surrendered, extinguished, transferred or otherwise got rid of; unless the blood be corrupted.

There are two other outstanding examples. The House of Lords even today remain the highest Court of Appeal, though in actual practice this function is performed by the six Law Lords. The conservatism of the people makes it possible for the House to continue with this judicial function of the antiquity, but the exigencies of modern times demand that it should not be performed by all the peers, but by six peers only who are created for life and are fully acquainted with the legal technicalities. In the second place there is the office of the Lord Chancellor, a legacy of the eleventh century. The Office is now an out of date institution, because the Lord Chancellor is the "greatest dignitary in the British Government, the one endowed by law with the most exalted and most diverse functions, the only great officer of the State who has retained his ancient rights, the man who defies the doctrine of the Separation of powers more than any other personage on the earth."

This difference in theory and practice in England is essentially due to the conventions of the constitution which have democratised the political institutions of the country. A large part of the British government system in fact, rests on these conventions and usages. The Cabinet itself is the child of chance and the working of the Cabinet including the ministerial responsibility rests upon the conventions, the traces of which can be found from the time of Walpole. So deep-rooted have these conventions been founded in the habits of the people and so firmly

the mechanism of the government is erected on their foundations that to violate them is to create chaos. So popular a king as Edward VIII dare not go against the wishes and advice of his ministers, in marrying the woman of his choice—Mrs. Simpson—which legally he could do. If he would have acted contrary to the advice of his ministers, there was no bar to it so far as the law is concerned. But he preferred to abdicate, because he never desired to make a legal truth a political untruth. It is for these reasons that the Government of the United Kingdom is “in ultimate theory an absolute monarchy, in form a limited constitutional monarchy, and in actual character a democratic republic.”

Traditions, in England also go hand in hand with the political institutions of the country. The royal grandeur on all ceremonious occasions, the picturesque pomp and show and various other formalities associated with the kings of the past are also found with the King of today. The ancient tradition is still observed at the time of the election of the Speaker of the House of Commons. “Gentleman Usher of the Black Rod” appears, as before in the House of Commons and invites the House to come across the Hall where the Lord Chancellor announces “His Majesty’s pleasure that you proceed to the choice of some proper person to be your Speaker.” The House of Commons opens with the same custom of reading the prayer by the chaplain and laying of the mace on the table. In order to hear the speech from the Throne the Commoners still go to the House of Lords in a procession preceded by the Sergeant-At-Arms. One of the humours of the Parliament on the opening day of the session is the search of the corridors, vaults and cellars of Westminster to see that the place is safe for the King, the Lords and the Commoners to enter. It is a tradition which is being followed from the time of the Gunpowder Plot of 1605. There is nothing wrong in taking the necessary precautions, “but the picture of twelve lusty Yeomen of the Guard (familiarily known as the ‘beefeaters’), in full Tudor regalia, solemnly trudging through endless rooms, corridors, and

subterranean passages carrying Elizabethan lanterns amid a blaze of electric light, and poking among gas fittings and steam pipes for concealed explosive, is calculated to draw a smile. "Similar ceremonies are also observed for bringing a session of the Parliament to an end."

Such is the nature of the English Constitution. The political institutions of the country are the reflection of the character and temperament of her people. England is the home of the conservative, tradition-loving, opportunist and therefore, the illogical people. It must however go to the credit of an Englishman that he is the most logical of all illogicals and the Constitution of the country is, accordingly the result of this conspicuous trait in the Englishman's character.

Q. 3 What do you understand by the conventions of the constitution? "The British system of Government though grounded on law is largely dependent on what have been called constitutional conventions." Explain and discuss

(*Punjab 1938 ; Patna 1939 ; Allahabad 1942 ; Agra 1942. 40, 37 ; Calcutta 1939*).

Ans. Conventions are those understandings, habits usages and practice which though form an essential part of a constitution are not laws passed by a legislature. They are as such mere customary rule which have become sacred like laws owing to long use. They cannot be enforced by a law court. Thus there are the following two broad differences between laws and conventions ;—

(1) Laws are enforceable through a court of law but conventions are not. There is no formal method of determining when conventions are broken and to set in motion the train of consequences which this breach should entail. If a voter in England is denied the privilege of voting he can enforce his lawful right to vote through a court. But if the King in England chooses to exercise his veto over laws and thus breaks a long

established convention, no law court in England can question His Majesty.

(2) Laws are more or less precisely formulated. But it is nobody's business to formulate conventions. Consequently at any particular time differences of opinion may arise about a convention which is said to be long established.

For a moment let us consider the sanctions behind the conventions, which are responsible for their enforcement. These are given below :—

(a) Public opinion.

Public opinion is primarily the source of strength of conventions. Conventions are followed because the people in a country want them to be followed. Public opinion, again, is based on reason. People only like the existence of a particular convention for reasons of its utility. Conventions in fact are, as it were, the rules of the political game and are obeyed as a code of honour because they are responsible and useful.

(b) The Regard of the governing class.

The second important sanction behind the conventions is the desire of the governing class to maintain the traditions of the governmental system in order "to keep the intricate machinery of the ship of the State in working order." It has to be noted however that the Government of the day are careful to maintain the conventions only because they know that the people who have elected them want to uphold the conventions and they have been elected on the implicit understanding that they would upkeep the constitutional traditions.

(c) The support of law.

Dicey is of the opinion that the conventions are obeyed because "a violation of these conventions will almost immediately bring the offender into conflict with the court and

the law of the land." Thus the convention that Parliament must assemble at least once a year is obeyed because if a ministry neglects to follow it, the Finance Act which is passed yearly would lapse and it would be difficult to carry out the administration without money. Similarly, the convention that a ministry must resign on a vote of no-confidence of the House is followed because breach of it would make it impossible for the ministers to carry on the Government without coming into conflict with the Parliament. Thus illustrating his theory Dickey comes to the conclusion that the force which in the last resort compels obedience to constitutional morality (conventions) is nothing else than the power of law itself."

Let us now turn to the other part of the question. A government may be said to be grounded on law if it has a written constitution or if at least its form may be determined from and has evolved through legal enactments. This is true of the English constitution. Some of the principles which to-day form its part have been enacted at different periods in the shape of legal statutes. The written part of the British Constitution consists of four elements.

(i) Historic documents which embody solemn agreements entered into at times of National crisis when people fought for their rights against the King. As for example the Magna Carta, the Bill of Rights, etc.

(ii) Parliamentary statutes which define the power of the Crown, guarantee private rights and regulate suffrage etc. *e. g.* the Habeas Corpus Act, the Reform Acts of 1832, 1864 and 1884, the Parliament Act of 1911, etc.

(iii) Judicial decisions which determine the meaning and limits of charters and statutes, and

(iv) Principles of common law many of which relate to the functions and powers of the government and the rights of the ruled *i. e.* the prerogatives of the Crown, the trial by jury, the people's rights of speech and assembly. Though the principles of common law have not yet been

reduced to writing yet all these can be enforced as law by the courts. Hence all these constitute the elements of law in the text of the English Constitution. Not only this, the British system of government is in form a Crowned Republic. This has evolved through legal enactments and can very easily be determined by such laws as Magna Carta (1215), Petition of Rights (1628), the Bill of Rights (1689), Act of Settlement (1701) and so on. Thus it is obvious that "the British system of Government is grounded on law."

But along with these legal elements, there are many customs, usages precedents and practices which are in vogue in the British system of Government. These traditions have not appeared on the statute book or in any statement of the law. Yet they relate to matters of utmost importance. These constitute the conventional element in the British constitution. These determine the day to day activities and relation of some of the most important public authorities. Without these the English Governmental system would not work even for a day. The following are some of the most important conventions of the British constitution.

(1) The King does not veto a bill passed by the Parliament.

(2) The Crown can create a sufficient number of new peers to overcome the opposition of the House of Lords.

(3) The party, which for the time being commands a majority in the House of Commons has a right in general to have its leaders placed in office. The most influential of these leaders must become the Prime Minister.

(4) Ministers are collectively responsible to parliament. They rise and sink together. They resign office when they have ceased to command the confidence of the House of Commons. A cabinet may appeal to the country only once by means of a dissolution.

(5) Parliament should be summoned at least once a year.

(6) A Bill must be read three times in the House of Commons before it is sent up to the other House.

(7) An Officer of the Crown is tried in the same court of law as an ordinary citizen. It is interesting to note that the Rule of Law in England is itself a convention.

(8) The existence of the cabinet with its functions and organization and of the Prime Minister are all conventions. The fact that the British Parliament is organized in two Houses is itself a convention.

It will be obvious from the aforesaid that if laws provide the frame work of the British Constitution the conventions inspire spirit into the otherwise lifeless skeleton so provided by the legal enactments. Conventions in fact are more important in the British system of Government. It is thus but true to say that "the British system of Government, though grounded on law, is largely dependent on what have been called the constitutional conventions." It is obvious thus that England has a constitution which is the oldest and perhaps the most complex in the world because it is the most conventional.

Q. 4. Explain the concept "The Rule of Law," How far is the Judiciary in England responsible for the upkeep of liberty of the people?

(Allahabad 1942 ; Agra 1942 ; Nagpur 1943.)

Ans. One of the very important features of the English Constitution is the Rule of Law. It is based upon the Common Law of the land and is the product of centuries of struggle on the part of the people for the recognition of their inherent rights and privileges. In England unlike the United States and France, the Constitution does not confer certain rights on the citizens and there is no Parliamentary Act which contains the Rights of Man. These rights are enjoyed by the people, because according to Dicey there exists in England the Rule of Law.

The Rule of Law, in the words of Dicey, constitute the following three fundamental principles :—

1. "That no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land." This rule implies that no person may be arbitrarily deprived of life, liberty or property.

2. "The Rule of Law further means that every citizen is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals." It implies in the first place, the equality of every one, irrespective of his official or social status, before law. Secondly there was to be only one kind of law which was applicable to every one. If the officials of the State do any wrong to an individual they can, accordingly, be sued in the ordinary courts and tried by them in an ordinary manner subject to the provisions of the ordinary law. In England, as such there do not exist special tribunals and special law for the trial of the officials of the State as is found in France. Dicey, in this connection further elaborated the point when he said "with us every official from the Prime Minister to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen".

3. The Rule of Law indicates that with the Englishman "The general principles of the Constitution arethe result of judicial decisions determining the rights of private persons in particular cases brought before the courts."

The Rule of Law as enunciated in the above three propositions of Dicey secures the supremacy of regular law as against arbitrariness ; it establishes the equality of all classes of persons before the law ; and finally it bases the Constitution on the ordinary law of the land.

Exceptions. The only exceptions to the Rule of Law are the following :—

(a) The King can do no wrong is the legal maxim in England. There is no court of law in which the King can be tried. He is immune from criminal prosecution and civil action.

(b) The public officers enjoy personal immunity from prosecution before a court for any act done in their official capacity.

(c) Judges are also immune from personal responsibility for any official acts, even if they act beyond their Jurisdiction, but not knowingly.

(d) Justices of the Peace are also protected from any proceedings for any official act done by them within their Jurisdiction, provided they have not acted maliciously.

In the absence of any fundamental declaration of rights the citizens derive these rights from the presence of the Rule of Law. These rights are :—

- (1) The right of personal freedom.
- (2) The right to freedom of speech.
- (3) The right of public meeting or assembly.

The first right is secured because no one can be arrested except for a definite breach of law which must be proved in a duly constituted court of law. Cases are not tried behind closed doors, but in open court to which the public has free access. The accused possess the inherent right of being represented and defended by a counsel. The burden of proof of the guilt rests on the accuser. Guilt or innocence is established in accordance with an extensive body of accepted rules and maxims constituting the Law of evidence. In all serious criminal cases the accused must be tried by a jury. Judgment is rendered in an open court and the accused person has a right to appeal to a High Court.

Freedom of speech is another important right which must be secured. In England any person can say or write anything and about everybody, subject to the provision

that he will be held responsible before a court of Law if he says or publishes anything which he is not legally entitled to say or publish. Similarly, the right of meeting is a well established fact in England. Citizens can hold an assembly and speak out their own minds according to the provisions of the ordinary law. All these liberties are further augmented by the fact that all persons are amenable to the same ordinary law of the land and the same courts. Private citizens can proceed against the Government servants if they abuse their powers, under the ordinary procedure of law and in the same courts. Unlike France there is neither Administrative Law nor Administrative Courts in England.

During recent years, however, for various reasons, the purity of the Rule of Law has disappeared and administrative law has found a due place in England. Various Acts of Parliament for example the Factory Acts, the Education Acts etc. give judicial powers to the officials thus curtailing the authority of the law courts. Many associations like the trade unions have recently shown a distrust of the courts of law. But delegated legislation is the most supreme factor in the emergence of the Administrative Law in England. Orders in Council and Provisional Orders, all of which are not really law, cannot be questioned in law courts and this, of course, is a rude shock to the Rule of law.

In spite of the recent emergence of the administrative law in England, it must however be admitted that the judiciary in England is the unfailing custodian of the liberty of the people. It has been aptly said that "Justice is blind, he knows nobody." England, of course, is the best example of this truth. The impartiality, independence and integrity of the English judges is a well recognized fact. Prof Laski in this connection says "Ever since the Revolution of 1688 the independence and incorruptibility of the British judges has been beyond dispute in this country. There have been harsh judges and stupid judges ; there have been cynics on the Bench and

an occasional figure like Justice Grantham, whose prejudice in a case of political flavour was so marked as to matter for serious concern. There have been judges—since there is no retiring age—who have remained on the court long after it was painfully apparent to the interested public that their powers were inadequate to their function. It is nevertheless true to say that with the single exception of Lord Macclesfield, the integrity of no English judge has been open to suspicion after his appointment to the Bench at least since the Act of Settlement. Even the exhibition of prejudice of an open kind must be regarded as minimum in character; for not half a dozen times in that period has judicial conduct been the subject of debate in Parliament.” It is this impartiality and integrity of the judiciary in England which secures to the citizens their rights. Moreover, the rights of the citizens are securely guaranteed by ancient usage and traditions, These traditions and usages are in reality more effective than any set of phrases written on paper,” and the judges in England act as the custodians of these usages and traditions.

Q. 5. State clearly what do you understand by the term Crown in the British Constitution. Distinguish it from the King. Explain also why does monarchy survive in England?

(Nagpur 1937 ; Agra 1947.)

Ans. Crown is symbolic of Kingship. In the days of absolute rule King in England used to be the Government. He was the head of the Legislature, the sole Executive and the head of the Judiciary. All these powers of Government, the king got after his coronation. Conversely, the Crown symbolized in itself the powers of the Government which came to be exercised by the King in virtue of his wearing the Crown. It is obvious as such that the term crown in the English constitution stands for Government with all its three branches legislative, executive and judiciary.

In the by-gone days Kings themselves exercised all the governmental powers. They made the laws according to their will and whims. They executed and administered it (law) as they liked. Thus in those days Crown was the Government and Government was the King. And naturally thus in the days of absolute rule there was no distinction between the two terms, the king and the crown.

But to-day after the advance of democracy in England there are many subtle distinctions in the vernacular of British Government but none more vital", as Gladstone once remarked, "than the distinction between the King and the Crown." The Crown today is an abstract idea implying Government. The king on the other hand is a concrete embodiment of Governmental powers. The Crown means a post or an office. The king on the other hand is a person with certain well defined formal and informal powers.

The distinction between these two terms is best expressed in the saying, "the King is dead; long live the King." It means that the King as a person may die but the Crown as an institution survives. Thus the powers, functions and prerogatives of Crown as an institution are never suspended for a single moment as they belong to a post and not to a person. It is in this sense that the kings may come and may go but the Crown (the Government as an institution) goes on for ever.

Uses of kingship in England.

To many of us monarchy has outlived its utility in the days of democracy. Yet kingship prevails in England. Naturally therefore, it becomes interesting to study why does monarchy survive in England. The following factors are mainly responsible for the survival of kingship in England :—

(1) In England monarchy did not hinder the evolution of democracy. In England monarchy has been sold to democracy. And the result had been a chorus of universal entogy (praise) on the part of the people. As a result of

this peaceful democratization of monarchy in England to-day, when kingship is a night-mare in Napoleon's France and the Tsarist Russia, monarchy is loved and maintained by the English people.

(2) Monarchy in England is a logical necessity of the Parliamentary pattern of Government that prevails in England. Under a parliamentary Government there is a rule of a representative majority party with a regular minority acting as an opposition. Under such a form of Government a time comes when there is no government in power for either the government has resigned of itself or due to a vote of no-confidence or because its term has expired. At such a time a formal head of the state is needed to hold the reins of Government till a fresh Government comes into office. This task the king does in the scheme of English Government.

(3) Not only this the King in England performs certain other specific functions. After the election has taken place, the king summons the leader of the majority party to form the ministry. Not only this the king also dissolves the Parliament. The decision for dissolution is no doubt made by the cabinet and the king only dissolves it on the advice of his Prime Minister. Yet it is commonly considered, as Ogg puts it that in a very unusual situation — His Majesty's consent to dissolve the House might be denied.

(4) The king is for the whole nation. In England one hears of His Majesty's Government and His Majesty's opposition, both of which as H. M.'s loyal servants serve the nation. The presence of a king in England thus puts the nation above party. Kingship also inspires undivided loyalty and patriotism. The King in England is in fact the Umpire who sees that the great game of Politics is played according to the dignified traditions of the country's Kingship in England also gives a sense of security to the conservative English People. It is well said that, 'with the king in Buckingham palace, people sleep the more quietly in their beds.'

Lastly the King supplies the link which holds together all the members of the British Commonwealth of Nations. Kingship at once offers an impetus and a justification for the thriving imperialism of the English people.

In a word Kingship in England has a "unifying, dignifying and stabilizing influence." The conservative English people who love everything that is old would never like to abolish this useful institution. Lowell aptly said, "If the King is no longer the motive power of the state, it is the spar on which the sail is bent, and as such it is not only useful but an essential part of the vessel."

Q. 6. "The Government of the United Kingdom in ultimate theory is an absolute monarchy, in form a limited constitutional monarchy and in actual character a democratic Republic" Discuss.

Ans Long ago Bagehot in his classic study of the English Constitution pointed out that the chief characteristic of the English Constitution is its unreal character. Bagehot rightly stated that "an observer who looks at the living reality will wonder at the contrast to the paper description. He will see in the life which is not in the books; and he will not find in the rough practice many refinements of the literary theory." The truth of this statement of Bagehot is borne out by the fact that apparently the king seems at the apex of the ladder yet in practice he is nothing but nominal and England which in theory seems to have an absolute monarchy in fact enjoys a democratic government where, to quote a French philosopher, the voice of the people is the voice of the God.

According to the letter of law the Government of U. K. is vested in the King. All the officers of the state both civil and military are appointed in the name of His Majesty and dismissed by him. The Ministers are his Ministers; they remain in office during his pleasure. The king is also the great law maker. He is the source of all law. He is also the fountain of justice. It is the king who summons, dissolves and prorogues the parliament. No parliamentary

election can be held without His Majesty's writ. Laws made by Parliament cannot be enforced without the assent of the king who if he so likes can also veto bills passed by the legislature. Not only this the king is also the Commander-in-chief of all the British forces, both during peace and war. All the wars are declared in his name. Likewise all peace treaties and other international agreements are negotiated and arrived at in the name of His Majesty. In a word there is nothing which the English king cannot and does not do in theory. His powers are uncontrolled, unrestricted and absolute. He has all rights and no obligations. All the people in U. K. are loyal subjects of His Majesty. Their national anthem is "God save the King." It is obvious as such that theoretically speaking there is in England an absolute type of monarchical government.

But if a man begins to study the political institutions of England this view begins to change. He soon realises that in England there is the Parliament on the one hand and the Cabinet on the other to check and balance the arbitrary decisions of His Majesty. There goes a saying in the English Constitution that "The King can do no wrong." This naturally implies that some person other than the king must be legally responsible for every act done by the king. Every act that the king does has to go under the seal of one or the other minister. The minister affixing the seal to any act is held responsible for it in the Parliament, the people's great tribunal of retribution and reward. If the Ministers are to be held personally responsible for any act done by His Majesty, the king must naturally abide by their advice. Thus it comes about that the powers of the king are limited by the existence of parliamentary government in England. It is a fact as Gladstone once remarked that, "there is not a moment in the king's life from his accession to his demise during which there is not some one responsible to Parliament for his public conduct and there can be no exercise of the crown's authority for which it must not find some Minister willing to make himself responsible." And this fact makes one

to feel that England enjoys a limited constitutional monarchy.

On a still closer examination of the working of England's political institutions a student has but to agree with the view of Laski that Monarchy has been sold to democracy in England and in actual character the Government of the U. K. is a democratic republic. The king in fact only reigns but does not rule. "Parliament enacts new laws, makes and unmakes ministries, controls the army and the navy, levies taxes and appropriates money where the king acts at all, he acts only through his Ministers; and that even—he acts only on ministerial advice. In theory the king is the fountain head of justice. The courts are His Majesty's Courts of justice but in fact the king does not and cannot interfere in the administration of justice, including prosecution, trial and sentence. The judges though appointed and dismissed in his name are really appointed by his Ministers and removed by them in general on an address of both the Houses of Parliament. It is true that the prerogative of mercy rests with the king but it is in fact exercised by his house secretary. In theory the king opens and dissolves parliament. Conventions and necessities here come to limit this power of the king. For Parliament must be convened every year to vote the supplies and pass the Army Act. Likewise the king grants a dissolution of the House of Commons only when asked for by his Prime Minister. All the speeches, including the one which the king delivers at the opening or the close of a Parliamentary session and all other messages are prepared by the Cabinet of the day and contains and propagate its policy. The king in theory appoints the Prime Minister and on the latter's recommendation the other Ministers also. The Prime Minister is in reality appointed by the House of Commons for the King has to appoint the leader of the majority party as the Prime Minister.

It is thus obvious from the aforesaid that in England the Cabinet, which is at once the representative and the guardian of the peoples' interest is the steering wheel of

the ship of the State," as Ramsay Muir puts it, "and the Prime Minister is the steer man." In fact thus the peoples' will dominate in England. Really thus sovereignty rests with the people and not with the king. It is in this sense that Munro has called England as the mother of democracies.

Q 7. What are the salient features of the English Constitution? What do you understand by the Rule of Law? (*Agra 1942; Nagpur 1944, 43; Calcutta 1941*).

Ans. "The British Constitution is the mother of all constitutions, the British Parliament is the mother of Parliaments. No matter by what names the legislative bodies of other countries may be known, they have a common parentage." (Munro).

The art of self-government has been historic contribution of the English people to the constitutional progress of the world. Hence without some knowledge of the English constitution it is difficult for anyone to have a true understanding of the European governments. A study of the characteristic features of the English Constitution thus become all important. An analysis of the characteristic features of the English Constitution can be made under the following heads :—

(1) A Parliamentary form of Government.

In constitutional practice, England enjoys a parliamentary form of government in which the executive is taken from and is responsible to the Legislature. Ogg beautifully comments, "The Government of U. K. is in ultimate theory an absolute monarchy, in form a constitutional limited monarchy and in actual character a democratic republic."

(2) Its evolutionary nature.

English Constitution as pointed out by Munro, "is not a completed thing but a process of growth. It is a child of wisdom and of chance whose course has sometimes been.

guided by accident and some times by high design." English Constitution thus is a child of evolution. It has grown through ages, it has not been made at one place, at one time by one set of people. It is not a well laid down clear-cut four-square building with a single architectural design. It resembles an old family mansion to which each successive generation has added wing, window and galleries to modify it to their immediate wants and to the needs of the time, so it lacks symmetry.

(3) Its life like organic character.

It follows from the evolutionary character of the English Constitution that, "the English Constitution," as Ogg puts it, "is a living organism."

Arthur Young laughed at the efforts of the French legislators who sought to make a constitution as though, "it were a pudding to be made out of a recipe." In contradiction to these 'made constitutions' the constitution of England has been compared to an organism possessed of a capacity for constant and continuous growth, giving response to the life forces working within.

4. Its so called unwritten character.

Another outstanding feature of the British Constitution is its unwritten character. This statement points out Munro, "is more apt to mislead than to enlighten," for many parts of the constitution are to be found written in charters and statutes. These parts, however only cover a small portion of the English Constitution. The exact political functions of the King, the position and functions of the Cabinet, the exact relations of House of Commons and the Cabinet, the relations between the Ministers and the Civil Service, the dogma of collective and joint responsibility etc. etc. are not to be found in any charter. These are only unwritten conventions which are sacred as law in the text of the British Constitution. The English Constitution is thus partly written and partly unwritten.

5. Its flexibility.

The English constitution is the most flexible of all the modern constitutions of the world. It draws no distinction between ordinary and constitutional laws, and proclaims the sovereignty of the British Parliament. Constitutional changes are made by the British Parliament in the same ordinary process of law making. Unlike U. S. A. no special machinery is required to affect such changes. "The English constitution is flexible not because it can be changed by the ordinary procedure of law making," comments Dr. Majmudar, "but also because it is broad enough to permit considerable changes in Government methods, without alteration in words." Its flexibility thus consists in its adaptability to circumstances. This flexibility can be best illustrated in the Abdication Act of 1936 passed within half an hour of its introduction.

6. Its unreality.

The English Constitution is not what it really appears. An observer who looks only at the living reality will wonder at the contrast to the paper description. According to Bagehot, "he will see in the life which is not in the books and he will not find in the rough practice many refinements of the literary theory." One example will make the point clear. Apparently in England the Crown seems at the apex of the ladder; while he is nothing but nominal in reality. "These unrealities—this wide divergence between theory and fact," comments Marriot "render it peculiarly difficult to analyse or to describe the actual working of the English Constitution."

7. A unitary system.

The English system of Government is unitary as opposed to federal. In a general system of government the political sovereign makes a distribution of the powers of the government among certain agencies central and divisional through a constitution which is supreme and which neither the central nor the divisional agencies has made and which is beyond the power of either to alter

exclusively. U. S. A. enjoys such a federal form of Government. In contrast to this there is only a single central government in which all powers are vested.

8. The Supremacy of parliament.

But for this unitary character of the English system of Government, the jurisdiction of Parliament, as pointed out by Sir Edward Coke, "is so transcendent and absolute." Parliament is all powerful legally—with it rest all the powers. It can alter features of the British Government at will. "The only thing," as Munro points out "it cannot do is to bind its successors. It cannot interrupt or put an end to the process of constitutional change"

From this characteristic feature three things follow :—

(1) In England there is no legal difference between constituent authority and the law making authority as it is in America. But in England Parliament is the law making as well as the constituent authority.

(2) In England the Judicial courts are given no powers to look into the constitutional validity of legislative acts. Every legislative act is valid in itself. No person or body other than the Parliament itself has a right to amend it, override it, or set it aside.

(3) "If separation of powers is the essential principle of the American Constitution," points out Ramsay Muir, "concentration of responsibility is the essential principle of the British Constitution." The British system tends to merge, responsibility for both legislation and administration in one all powerful government.

9. Its impartiality and legality.

According to Dicey the rule or supremacy of law, is a characteristic feature of the English Constitution. According to the rule of law, there is in England, one law for all, and that law is supreme. It thus secures the legality and impartiality of the English Constitution in which the right of the individual to personal liberty is always recognized.

According to Dicey, the expression, 'Rule of Law' conveys the following three ideas:—

(1) That no man is *punishable or can be lawfully made to suffer in body or goods, except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land.

(2) That every man whatever his rank or condition in life is subject to the ordinary law of the land under the jurisdiction of the ordinary courts.

(3) That the laws of the constitution are not the source but the consequence of the right of the man, as defined in judicial decisions and enforced by the courts. The constitution itself is the product of the ordinary law of the land.

The above analysis makes it clear that all subjects in England enjoy an equality of status. The rights to individual freedom is inherent in the law of the land and cannot for that reason be destroyed except by a revolution in the institutions of the Government and manners of the Nation.

This in brief is the survey of the characteristic feature of the English Constitution. The more we study it, the more outstanding and interesting these features become to us.

Q. 8. What are the features of the British Cabinet form of Government? (*Allahabad 1943, Calcutta 1935*);

Ans. While every act of the State is done in the name of the King, the real executive in England is the Cabinet. But like various other political institutions in that country, Cabinet is also the child of chance. Though it is the guiding and the directing force in the government, yet it is unknown to law. According to Bagehot, "Cabinet is a hyphen that joins the buckle that binds the executive and the legislative departments together" Lowell calls it the "keystone of the political arch" and Sir John Marriot

refers to it as the "pivot round which the whole political machinery revolves." With whatever colourful phrases the term Cabinet be used and from whatever angle it is approached it is a central figure in the Constitution of Great Britain.

A systematic study of Cabinet form of Government in England implies observance of certain rules upon which it rests. These rules are the result of usage and experience which have taken deep root in the constitutional development of the country and now form the foundation of the governmental structure. The whole system is based upon the fact that the government is carried on in the name of the King by the ministers who are responsible to the House of Commons. The important features in this connection are :—

1. The King summons the leader of the majority party to form the ministry. From the later years of reign of King George III, the rule became fixed that in making up a new ministry the King should simply receive and endorse the list of nominees prepared and presented by the Premier. The person to form a ministry, of course, should be a party leader who can command a parliamentary majority.

2. Since 1922, it has become a convention that the Prime Minister must necessarily be a member of the House of Commons. But every ministry, since the early eighteenth century, has contained members from both the Houses.

3. Another general rule which the incoming Prime Minister must ensure is the party solidarity both within and without the Parliament. Since 1783 the maxim has gradually worked that in the interests of unity and efficiency it is essential that the Cabinet be politically homogeneous. Then team work, which is the basis of a cabinet form of government demands oneness of purpose and aim. To achieve this object the ministers must essentially belong to one single party. It is the unity of

the Cabinet which accounts for its success. However divided it may be behind the closed door, of 10 Downing Street, it must present a solid front to Parliament and to the world. But emergency and national crisis may demand national government. From 1915 to 1922 and from September 1939 to 1945 the country has experimented with coalition governments. Under war times such a government is not only useful but indispensable.

4 The Ministerial responsibility is of two kinds viz. legal and the political. Legal responsibility— is that which arises from the principle—though unwritten—that the “King can do no wrong” and every action of the King must be the action of at least one of his responsible ministers. This minister can be held responsible before a court of law, if in the discharge of his duties it can be adequately shown that the minister has acted contrary to the provisions of the law.

The other—political responsibility—is the essence of the Cabinet system. and this in its turn “is Britain’s chief contribution to modern political practice” By this responsibility we mean that every minister is individually responsible to the Parliament for all his public acts, and the whole Cabinet is collectively responsible for its policy. Whenever the House of Commons disapproves of a policy of the government or the individual action of a minister, they must go out of office on the passing of a vote of no confidence. For a time the responsibility of the Cabinet continued to be purely personal or individual. The first Cabinet to bow as a body before a hostile House of Commons was that of Lord North in 1782. From that time on the Cabinet developed such a degree of solidarity that the rule came to be, as it is now, and since 1866, no cabinet member retires singly. If any individual member finds disfavour, as in the case of Sir Samuel Hoare in December 1935, either he is persuaded by his colleagues to change his policy or to resign.

5. Nobody has better reasons than a group of Cabinet ministers that in union there is strength. At all events the ministers are confronted by the opposition party. Any outlet of disharmony in their views, in the meetings of the Cabinet is likely to plague them, therefore the importance of necessity on the secrecy of the proceedings. Moreover, the leakage of differences of opinion tells upon the solidarity and unity of the Cabinet. Since they rise and fall in union, it is necessary that differences on details must be kept a well guarded secret. It is more true in the case of foreign policy and issues of international importance. Prior to 1918 no minute of the Cabinet meetings were kept, and no agenda was circulated. It was Lloyd George who for the first time introduced in 1919 the system of circulating agenda and keeping minutes of the proceedings. Since then a regular Cabinet Secretariat has come into practice.

6. The combining factor is the Prime Minister. He is the leader of the party, and all the ministers work under his leadership. If the questions were to have been the quest of a leader, as it is in France, the position would have been a bit difficult. But the leader with power to make and unmake the ministers and also possessing the power of party discipline, preserves the integrity of the cabinet.

✓ Q. 9. "While nominally supreme the House of Commons has virtually become subservient to the Cabinet." Explain and discuss in the light of this statement the nature of the Cabinet supremacy in England.

(Agra 1942 ; Calcutta 1942, 31 ; Patna 1944.)

Ans. "The business of making a Government and providing it," says Laski, "or refusing to provide it with the formal authority for carrying on the public business is the pivotal function of the House of Commons upon which all other functions turn." In theory thus the House of Commons controls the Cabinet. The Cabinet is the executive committee of the House of Commons. The former is chosen

from and is supposed to be responsible to the latter. The Cabinet in theory lives at the pleasure of the House of Commons, which can control the Cabinet through either of the following ways and compel it to resign.

(1) The House puts questions to the Ministers. If the House is dissatisfied with the answer on an important topic it may be made an issue for a 'non-confidence' motion.

(2) The House may pass a vote of censure criticising the cabinet for some specific act.

(3) It may reject a measure which is declared by the Cabinet as vital or it may pass a bill in opposition to the advice of Ministers.

(4) It can also discuss any suspected delinquencies of a department while considering its demand for money and propose a token cut in the salary of the Minister concerned

(5) Finally, if the House is dissatisfied with the Cabinet's general policy without any reference to a particular measure, it can pass a simple vote of, 'want of confidence' for which it is not bound to assign any reason whatsoever.

Thus the very life of the Cabinet depends upon the confidence of the House of Commons and in theory at least the Cabinet is the servant of the House.

But in practice, however, the servant rules the master. The rigours of party discipline and the activities of the party whips make it difficult for a member belonging to a majority party forming the Government to vote against the bills proposed by their Government in power. His Majesty's opposition, which usually forms the minority may propose a vote of censure. But few votes of censure are likely to be carried on for according to the rules of Party discipline the rank and file of the party is supposed to support the policy of the Cabinet in the House at all hazards. It is the Cabinet which instructs the party whips to order

the members of the party to vote in a particular way on a certain measure. The members of the majority party who are anxious to retain their party in power in their own interests follow the party whips blindly. The Cabinet thus relying on the solid support of its party may well afford to disregard the wishes of the opposition and to scoff at and lightly play with its criticism. No Government with a majority has been over-thrown by the House of Commons since 1895. Consequently the House of Commons has been reduced to the position of a registering organ—a rubber stamp confirming to the dictates of the Cabinet. So the critics rightly contend that, “so long as the party supports the Cabinet it is the Cabinet which controls the House and not the House that controls the Cabinet, the Government in power,” in all the fields legislative, executive and financial. This will be borne out from the following:—

In the legislative sphere.

The House of Commons is primarily a legislative chamber. The legislative functions of the House are no doubt still important. But the power to shape legislation has passed away to the Cabinet. It is the Cabinet which draws up the legislative programme and carries it out. The House can amend and criticise but it cannot annul. It must pass a bill in the form acceptable to the Cabinet.

In the executive sphere.

In matters of administration also the House is ruled by the Cabinet. The Cabinet decides within fairly wide limits what business shall be submitted to the House and what shall be allotted to it. It also makes rules and regulations for the transaction of business in the House.

In the financial sphere.

The Cabinet is also responsible for the financial policy of the State. It prepares the annual Budget. It indicate

how the revenues are to be raised and spent. The House can criticise these proposals. But it cannot increase the expenditure on any head or propose fresh items. It can neither increase the taxes nor suggest new ones. It can only reduce the proposed rates. Moreover the way in which the accounts are presented is such that it is difficult for a private member to know or suggest what and where economy is possible. There is also the scuffle against time which deliberately forbids any prolonged and critical examination of the various items of expenditure. Discussions on appropriations are political in nature, embodying in themselves a customary lip homage to conventions. Not only this these attempts to cut down expenditure are frustrated by the use of the party majority which is always at the beck and call of the Cabinet.

It is obvious from the aforesaid that the Cabinet to-day exercises control over the House of Commons which Gladstone once described as, "the centre of the British system, the solar or round which the other bodies revolve." The following factors have largely contributed to the Cabinet's supremacy in England.

(1) The effect of party discipline, *free voting*

With the enlargement of franchise in England an elaboration of party discipline was necessitated which in its turn strengthened the position of the Cabinet. In the first half of the 19th century, when there was no such rigid party discipline and members were not pledged to support their Government on party grounds through thick and thin, there was a good deal of free voting and also of cross voting. Governments never had large standing majorities. The life of the Cabinet depended upon debate. It could not over-ride Parliament with security as it does now. It had often to accept the judgment of the House. But now, when the whip of party loyalty is cracked to stifle opposition within the party ranks the cabinet can have things in its own way due to its assured majority in the House of Commons.

(2) The power of dissolution.

The Cabinet in England enjoys the right to dissolve the House when it believes that it and not the House commands the confidence of the Nation. The members of the majority party are thus coerced to accept the views of the Cabinet on pain of dissolution of parliament, for they do not want to undergo the risks and expenses of a general election again and again. Cabinet supremacy did not exist in France under the Constitution of the third Republic for there a defeated Cabinet enjoys no power to dissolve the popular chamber.

(3) The desire of majority party to hold power.

The Majority party in the House is above all concerned with keeping the reins of Government in the hands of its own party. So they resist every criticism with the entire weight of party majority. It does so both by hook and crook. Naturally, therefore they avoid free discussion and free criticism. The House thus is not in a position to exercise its functions of control through criticism in an effective way.

(4) The heavy business of the House.

Moreover, the House is overweighed with its normal duties, variety of work and the mass of its interests. Consequently the work falls in arrears. The members therefore, have to leave many of the transactions to the exclusive discretion of the ministers. This heavy business of the House is also conducive to cabinet supremacy.

5. The effect of the Parliament Act of 1911.

Lastly it should be noted that the Parliament Act of 1911 has also helped the Cabinet in becoming supreme. The House of Lords before it was deprived of its power and potency by the Act of 1911 could check the Cabinet effectively because there (in the House of Lords) the latter (Cabinet) enjoyed no majority, the House of Lords being hereditary. But now, because of its solid majority in the

House of Commons the Cabinet is left supreme and uncontrollable.

From the aforesaid it should not be supposed, however, that the Cabinet forms a temporary dictatorship. The authority of the Cabinet is derived from the confidence of the majority. This majority, however rests upon popular support. If the Cabinet displays excessive secrecy, or grave discourtesy or makes a continuous threat of resignation or dissolution or shows inability to quell an angry public opinion outside, it is likely to raise revolt in the rank and file of its supporters. The Prime Minister with his colleagues in the Cabinet must try to learn the direction of their supporters' mind and act accordingly. The Prime Minister cannot help saying with Carlyle, "I am their leader, therefore I must follow them."

Q. 10. Discuss the nature of the sovereignty of the English Parliament.

Ans. The chief characteristic of the English Constitution is the sovereignty of the Parliament. De-Lolme even went so far as to make the statement that the Parliament can do everything except to make a man a woman or woman a man. But like various remarks made by De-Lolme this is also erroneous. Legally speaking the supremacy of the Parliament is absolutely complete and there is nothing to debar that body, if it were to pass a legislation decreeing, that all men in England were henceforth to be considered as women and *vice versa*. The courts cannot question its legality though it is true that the Parliament cannot, in fact change the facts of nature.

According to Dicey, sovereignty of the Parliament has reference to three things :—

1. There is no law which the Parliament cannot make.
2. There is no law which the Parliament cannot repeal or modify ; and

3. There is, in the English Constitution, no distinction made between the Constitutional Law and Ordinary Law.

These three points have further been supplemented by Dicey and he says that the Parliament has the right to make and unmake any law whatever; and further that no person or body of persons is recognized by the law of England as having a right to "override or set aside the legislation and further this right or power of Parliament extends to every part of the King's dominions."

There is no doubt that legally speaking the supremacy of the Parliament is all-embracing and all-pervasive. But Dicey and others while speaking of the powers of the Parliament are dealing with legal principles and not facts. A lawyer's conception of sovereignty is not matter of fact. What is a legal truth may be a political untruth. Similarly, the supremacy of the Parliament "is a legal fiction and a legal fiction can assume any form. In practice there are many matters over which the Parliament finds itself incapacitated.

It must also be noted that the English Parliament consists of the King, the House of Lords and the House of Commons—all the three functionaries join together to complete the actions of the Parliament. But the competence of the House of Lords, with the passage of the Act of 1911, has become limited and if to-day the King and the Commons were to pass a law abolishing the House of Lords—within the requirements of the Act of 1911—there is nothing to obstruct it. Therefore, the conception of the sovereign power, today stands fundamentally changed. Under the present circumstances Parliament, as a matter of fact is the House of Commons and in the broader sense it means the majority party which, in its turn is the Cabinet.

Undoubtedly, it is again an undisputed fact that the legislation passed by the Parliament may not have any regard to the moral aspect. But it still remains a fact that

the Parliament dare not pass a law which is opposed to the dictates of either private or public morality.

Similarly there are certain Acts of Parliament which the subsequent Parliaments cannot repeal and, therefore, the legislative authority of the existing Parliament may be limited by the enactments of its predecessors, for example, the Acts of Union.

The Taxation of Colonies Act of 1776 is certainly an enactment "of which we may safely predict will never be repealed and the spirit will never be violated."

Though Parliament may legally legislate for the Dominions, its powers are rigidly limited by the constitutional limitations. As a result of these constitutional limitations it will be in accord with the constitutional position of all members of the British Commonwealth "in relation to one another that any alterations in the law touching the succession to the throne on the royal styles or titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom." Again, no law passed by the English Parliament can be applicable in any of the Dominions. Constitutionally, the Amendments of the North America Act of 1867 can be made by the English Parliament. But the convention which, today, governs the Constitutional amendment is that the Constitutional amendment is made by the English Parliament on the joint representation of the Provincial and Central Governments of Canada. What is true of Canada is likewise true with respect to other Dominions.

The jurisdiction of the Parliament is further limited by the practices of International Law. It is now a recognised principle of the English Constitution that International law is a part of the Municipal law of the land. Any legislation which is repugnant to the principles of International law is beyond the jurisdiction of the English Parliament.

Further the judge-made law, the delegated legislation and a new form of administrative law, which is finding such an important place in the English Constitution, are rudimentary pieces of law and are therefore important encroachments over the sovereignty of the Parliament.

It shall be evident that the principles upon which Dicey enunciated his theory of Sovereignty of the Parliament are altogether smashed and the sovereignty of the Parliament in that sense, like the conception of "sovereignty" itself becomes a political myth.

✓ O. 11. "The Prime Minister is the key stone of the Cabinet Arch". Explain and discuss.

(Agra 1943, 40 ; Nagpur 1948, 41 ; Allahabad 1944)

Ans. Lord Morley described the English Prime Minister as "The key stone of the Cabinet Arch." The phrase shows that like a key stone in an arch, the British Prime Minister is the Key man in the Cabinet. He is the keyman because he is the person (a) who is central to the life and death of the Cabinet and (b) who is not only the chief executive but also a leader of the legislature. The position of the English Prime Minister is indeed of super-importance. An accurate observer once rightly pointed out that "An English Prime Minister with his majority secured in Parliament can do what the German Emperor and the American President and all the Chairmen of the Committee cannot do, for he can alter the laws, he can impose taxation or repeal it and he can direct all the forces of the state."

It is interesting to note that the office of this important official was not known to law till December 2nd 1905, when a royal proclamation was issued, "giving place and precedence to the Prime Minister next after the Archbishop of York"

The powers and functions of the British Prime Minister may be analysed under the following heads :—

I. Prime Minister as the life and death of the Cabinet.

The king in England appoints the leader of the majority party as the Prime Minister. He is summoned by the King to form his ministry. The Cabinet, nay the whole Ministry, is formed by him. Although in the making of the Ministry he is to be influenced by considerations of party pledges and he at times is forced to take in his cabinet even those people for party considerations, whom he may not be liking at all, yet a Prime Minister with a dominating personality can enjoy a great deal of discretion in the choice of his colleagues.

He not only forms the cabinet ; he can also unmake it. He can force the resignation of an individual Minister or Ministers, "either due to insubordination or indiscretion." In 1922, for example, Mr. Montague, the Secretary of State for India was forced to resign as he had given publicity to an important decision without consulting his colleagues. In December 1935, Sir Samuel Hoare had to resign because of his wilful foreign policy. If the Prime Minister vacates the office, the entire Ministry goes out. His fall is thus the fall of the Government. When any Minister differs from him, it is the dissenting Minister and not the Prime Minister who goes out. He can require his colleagues to accept his views or his resignation which would mean their resignation also. It was in this sense that Laski opined that the English Prime Minister is central both to the life and death of the Cabinet.

The Prime Minister has also to keep the team of his Ministers together. He is supposed to exercise a general supervision over the work of his colleagues. He is the umpire in case of any differences of opinion among them. He is supposed to iron out these differences.

All this should not be taken to mean that the Prime Minister can ride rough shod over his colleagues. He has to carry them with him in order to remain himself in office. Though not the boss, he is certainly their leader. It cannot be denied that he is essentially *Primus inter pares*—the first

among his equals. Ramsay Muir draws a long bow (exaggerates) when he writes that the phrase *Primus inter Pares*, "is nonsense as applied to a pontentate who appoints and can dismiss his colleagues. He (the Prime Minister) is in fact, though not in law, the working head of the State, endowed with such a plentitude of powers as no other constitutional ruler in the world possesses, not even the President of the U.S.A."

2. Prime Minister as chief executive.

The English Prime Minister is the chief executive head of the State. He is a leading figure in the Cabinet. His main duties are to form, summon and prorogue and preside over the Cabinet meetings. He shapes the general policy of administration with his colleagues. His job is to lay down the broad outlines, having the details for minor officials. Nothing relating to the general policy or affecting the efficiency of the service must be done without his advice. He accords interviews to the representatives of the press. He alone makes public statements of Governmental policy,

3 The Prime Minister as Crown advisor.

The Prime Minister is the sole means of communication between the Cabinet and the King. In the distribution of the Crown honours and distinctions he has the decisive voice. In addition to the appointment of Ministers and under secretaries, all the higher ecclesiastical offices are filled up by his advice. He also exercises the Crown's prerogative of pardon and energy. He advises the King to dissolve parliament and to order general election to ascertain the will of the electorate on important issues. The effect of the sale of Monarchy to democracy in England has been the omnipotence of the Prime Minister who is to-day in most cases the Crown incarnate.

4. The Prime Minister as the leader of the House of Commons.

The Prime Minister is the recognized leader of the House of Commons. He is expected to speak the final

word on every issue in Parliament, unless due to over work, for example in cases of national or international emergency he delegates this work to any other minister. In addition to his acting as an informal mediator in the quarrels between the different departments and the ministers, he makes statement of general nature to Parliament concerning every department of his Government, while other ministers speak about their respective departments only. He keeps a careful watch over all Government bills in Parliament. He is expected to speak not only on general questions in Parliament but also on the most important Government bills.

5. The Prime Minister and the conduct of foreign affairs.

The English Prime Minister is largely responsible for the foreign policy of Great Britain. He receives ambassadors from other countries. He can exchange public messages with the ministers of other countries and negotiate treaties and alliances with them. In the days of war the English Prime Minister, if he is really a Churchill in strength, can become almost a dictator-like war lord to guide the destinies of the Nation in such an international crisis. Even when he does not hold the portfolio he can actively participate in the shaping of foreign policy and the control of foreign relations, as was done by Neville Chamberlain in negotiating with Herr Hitler and signing the Munich agreement although Lord Halifax was foreign secretary. It may be noted here that the Prime Minister in England can hold any portfolio in addition to that of the First Lord of Treasury. It will be obvious from the aforesaid that the Prime Minister's is the most significant office in the system of English Government. The success and strength of a Cabinet and the nature of the policy of the Government depend very largely upon the personality, character and ability of the Prime Minister.

Indeed as Ramsay Muir aptly remarks. "The Cabinet is the steering wheel of the ship of the State and the Prime Minister is the steerman."

Q. 12. Describe the functions and the powers of the Speaker of the House of Commons.

(Calcutta 1930 ; Patna 1934 ; Punjab 1935 ; Agra 1946.)

Ans. The Speakership is an office the origin of which is obscure but it is an office of much dignity, honour and power. The first Speaker known to have been chosen was Sir Thomas de Hungerford in 1377. In earlier times the Commons had no part in the legislation. All that they could do was to send petitions to the King and the Speaker was the man whom they commissioned to bear their petitions and urge them upon the Sovereign's attention. The Speaker was, therefore, for all intents and purposes the recognized spokesman of the House. Even at the present time, the members of the House of Commons have access to the King only through the Speaker.

In earlier days the King appointed the Speaker, but long after when the office became elective, the usage was as Coke testified in 1648 for the Sovereign "to name a discreet and learned man" whom the Commons then proceeded to "elect". To this day the choice of the House is subject to the approval of the Crown but no Speaker has been rejected since 1679. The Speaker is unanimously elected at the opening of each Parliament and remains in office till the life of the Parliament. If the speaker of the preceding Parliament is still a member of the House, the convention is to re-elect him. It is another convention that the retiring Speaker is not opposed in the general election from the constituency he wishes to stand. Changes or party alignment do not affect the position of the Speaker since he is no party man.

We have from the sixteenth century that a Speaker ought to be "a man, big and comely, stately and well-spoken, his voice great, his carriage majestical, his nature haughty and purse plentiful." In any case the Speaker ought to be a man "able, vigilant, imperturbable and tactful."

The Power of the Speaker.

He presides over the sittings of the House of Commons, except when it sits as a Committee of the Whole and decides who shall have the floor. All speeches and remarks are addressed to the Chair.

He warns disorderly members and suspends them from sittings of the House, if any member flouts his authority. As a drastic measure he can get the noisy member removed from the House through the Sergeant-at-Arms. He adjourns the House, if the disorder becomes serious.

He puts questions and announces the results of votes. He decides points of order and for that purpose must be a thorough master of the technicalities of procedure."

He does not vote except in the case of a tie and gives his casting vote in such a way as to avoid making the decision final, thereby extending to the House another opportunity to consider the question.

He interprets and applies the rules and, as such, his ruling is final which need not be contested.

He advises the members and the House on points not covered by law or precedent.

Under the Reforms Act of 1911 it fell to the sole power of the Speaker to determine whether a given measure is a Money Bill or not.

Upon him, as an impartial non-partyman and well informed official is occasionally devolved the task of appointing the members of the great Conference or Commissions. Occasionally, he too, is required to preside over a constitutional conference, like the Buckingham Palace Conference on the Irish Crisis in 1914 and the Speaker's Conference 1920.

In the conduct of all these affairs he keeps himself above party politics, and unlike the Speaker of the Chamber of Deputies in France, he avoids any display of

personal sympathies or partisan leanings. He never publicly discusses or voices an opinion on party issues, and the moment he is elected he becomes no-party man. In office he is an impartial judge and knows neither friend nor opponent in applying the rules. All these precedents, which are attached to the office of a Speaker in England, were observed by late Mr. V J. Patel, when Speaker of the Central Assembly in India. But sad as it may seem the Congress was the first to break those happy precedents. Babu Purushottam Dass Tandon, the Speaker of the Assembly in U. P. clearly maintained that the conditions prevailing in England were not applicable to India.

The conditions are different in the United States of America. The traditions existing there do not make it possible to pay so much deference to the Chair as at Westminster.

Q. 13. What is the process of law making in England ?

Ans. In the year 1414 the King agreed "that from henceforth nothing be enacted to the petition of the Commons contrary to their asking." From that time on any law in England must necessarily pass through both the Houses of Parliament and may, except the money bills, be introduced in either of the Houses. With this step came the need for a system of Parliamentary procedure. Afterwards there developed the practice of giving each measure three readings, referring it to the Committee, and holding debates on it when difference of opinion arose.

The Bills introduced into the Parliament may be of three kinds. A measure introduced by the Government effecting the whole or major portion of the people and concerning the general interests of the community, is called a Public Bill, e.g. a Bill changing the suffrage or imposing or modifying a tax, is a Public Bill.

A private Bill.

A Private Bill, as contrasted from the Public Bill, is that which is not introduced by the Government but by an individual member of the legislature, in his individual capacity, with or without the support of the Government. Private Bill does not effect the general interests of the community. It relates to the interests of some individuals or corporation or municipality.

Private Member's Bill.

But it does not mean that a member not occupying the treasury benches is precluded from introducing Bills which concern the wider and general interests of the community. Any member of the House may introduce any measure except the money bill, but before doing so he must beforehand see to have the full support of the ministerial party. Such a Bill is known as a Private Member's Bill.

How the Public Bills are introduced.

The procedure of getting Bills before the House of Commons was not so complicated until 1902. Now-a-days what a member has to do is to inform his intention of introducing a Bill, which appears on the agenda or the "Order of the day." There are two methods of introducing the Bill. On the day fixed on the Agenda and when called upon by the Speaker the Bill is entrusted to the Clerk of the House. Often the drafting of the Bill is not completed by the appointed day. The member incharge of the Bill, in such a case, hands over to the clerk a Dummy Bill—a piece of paper on which only the title of the Bill is written down. It is read out loudly by the Clerk and that finishes the introduction of the Bill which also constitutes its First Reading. The Bill is then printed and placed on the proper calendar to wait its turn.

Ten Minutes Rule.

There is another method of introducing a Bill. Occasionally a minister introducing an important measure or a

private member, in order to acclaim importance introduces it, under what is called Ten Minutes Rule. It gives to the sponsor of the Bill an opportunity to explain and defend the Bill's contents. It likewise gives an opportunity to the Leader of the Opposition to oppose it, if it is so desired. This method too finishes with the First Reading of the bill.

Second Reading of the Bill.

On a day, fixed in advance by an Order of the House, the introducer of the Bill moves it that "it be now read a second time." It is at this point that the battle between friends and foes really begins. The supporters of the Bill explain, elaborate, elucidate and defend the Bill, while the opponents criticize and attack it, usually ending by a hostile amendment or that "the Bill be read a second time this day six months hence." Both these methods amount to defeat of the Bill. The debate on many occasions is a battle royal. The debate having ended, the motion is put. If the Opposition prevails the Bill perishes, otherwise it is committed to the proper Committee. But it must be remembered that the defeat of a Public Bill amounts to a vote of no-confidence against the ministry and it must resign.

Committee Stage.

If the Bill emerges successfully through the Second Reading it goes to the appropriate Standing Committee, if otherwise not determined to entrust it either to the Select Committee or a Joint Committee. Committee stage in England is, of course, the time for discussion of the Bill in all its details. It is again interesting to note that if the Bill is referred to the Select Committee, "the measure goes as it would have in any case, to the Committee of the whole or to one of the Standing Committees."

Reporting of the Bill.

Eventually the Bill is reported to the House amended, or otherwise. If reported by a Standing Committee or

Committee of the Whole it is considered by the House afresh and in details, otherwise the Report Stage is a mere formality.

Third Reading.

Although the fate of the Bill is pretty well certain by that time, but the Opposition may be reluctant to give way and thus force another lengthy debate in which not only the details but even the principles of the measure may be attacked and defended. The votes are then taken and the Bill is accepted, or rejected, by the House as it stands.

If the House accepts the Bill then it goes to the other House for concurrence and undergoes the same process. Having been passed therefrom it awaits royal assent after which it becomes a law.

Q. 14. Critically examine the Committee stage in England.
(Punjab 1938).

Ans. Democracy has brought about a revolutionary change in the nature of laws. In a non-democratic country laws are the commands of the rulers and these are made without any reference to the people. Democracy, on the other hand, is based upon the consent of the people and all laws are the expressions of their will which are made by their representatives in the legislature of country. Naturally every legislative body is pressed for time and there is an overflow of business in all the legislatures of the world. Moreover, these legislative bodies have now become over-wieldy, because of extension in the suffrage and, therefore, the true purpose of the measure introduced and discussion of all pros and cons cannot be fully and healthily carried on. Therefore, in legislative bodies throughout the world a large part of the preliminary work is assigned to Committees of the House and it is known as the Committee Stage. The underlying idea of such a procedure being to save time and gain efficiency.

England is no exception to this rule. As early as the reign of Elizabeth, "It was not unusual to refer a bill, after its second reading to what we now call a select committee, i. e. a group of members specially designated to study the measure and report on it." In the last 50 years and notably since 1919 the amount of service required from committees has been steadily increasing. The Committees of the House of Commons are of five main types :—

- (a) The Committee of the Whole House.
- (b) Select Committees on Public Bills ;
- (c) Sessional Committees on Public Bills ;
- (d) "Grand," or Standing Committees on Public Bills and
- (e) Committees on Private Bills.

Committee of the Whole.

The Committee of the Whole consists of all the members of the House of Commons. But it is distinguished from the House itself in that :

(1) The Committee of the Whole is presided over not by the Speaker of the House of Commons but by the Chairman of the Committee, or in his absence by the Deputy Chairman. The Chairman or the Deputy Chairman does not sit in the Speaker's Chair, but in the chair of the Clerk of the House of Commons.

(2) The mace, which is the symbol of authority of the Speaker, is placed, so long the Committee is in session, under the table.

(3) In the Committee, unlike the House, the motion need not be seconded.

(4) All the devices which aim at cutting off cannot be moved.

(5) Members are allowed to speak any number of times on the same question. There is no restriction in the House of Commons.

It shall, thus, be clear that the procedure followed in the Committee of the Whole is much less formal and restricted and it accounts for greater flexibility and freedom of discussion. All issues are, accordingly, discussed threadbare. When the work of the Committee is done, the Committee "rises". The House of Commons again comes into session and the Speaker of the House occupies his Chair. The Chairman of the Committee of the Whole reports to the House all the conclusions the Committee had arrived at during its deliberations.

The practice of referring all Public Bills to the Committee of Whole came into vogue during the reign of Charles I. But since 1907, when provision was made of the increased use of the Standing Committees fewer Bills began to be referred to the Committee of the Whole and now a days measures go to this Committee only if they are :—

- (i) Money Bills or
- (ii) Bills confirming provisional orders ; or
- (iii) If the House so determines that a particular Bill be referred to the Committee of the Whole.

When the Committee of the Whole considers appropriation Bills or Resolutions, it is called the Committee of the Whole on supply or simply Committee of the Supply. It is Committee of Ways and Means when it considers Bills or Resolutions for the revenue.

Select Committee and Sessional Committees.

Select Committees are appointed to consider and report on specific measures or questions which involve some new principles or upon some subject which has not yet come before the House in the form of a Bill. Select Committees consist, as a rule of 15 members and are created from time to time and as such are to be differentiated from

the Standing Committees. A Select Committee is more or less composed of technical experts fully familiar with the details of the proposition referred to it. They collect evidence, examine witnesses and in other ways obtain necessary information and report it to the House. As soon as it finishes the work entrusted to it, the Select Committee passes out of existence. Accordingly Select Committees are also called Ad Hoc Committees.

The number of Select Committees is, of course, variable; but rarely small; something like a score are generally provided for in the course of a session. "As a rule eight or ten are set up for an entire session, and hence are known as Sessional Committees. Of these the Committee of selection is itself an example. All those Select Committees which continue through the session are called Sessional Committees.

Standing Committees.

In 1882, certain Standing Committees were appointed to further economise the time of the House. Standing Committees are appointed at the opening of the session and remain unchanged until the Parliament is prorogued. In the beginning there were only two Standing Committees dealing with Law and Justice and Trade, Agriculture, Shipping and Manufacture. In 1907, the number of the committees came to 4, each committee consisting of 60 to 80 members and all bills, except Money Bills and Private Bills, were required to be referred to the appropriate Standing Committee. In order to expedite the work, the number of Committees was raised to 6 in 1919. At present there are five. Since 1926, each committee has consisted of 30 to 50 members, with 20 as a quorum. For the consideration of any particular Bill the Selection Committee may add from 10 to 35 other members bringing the possible maximum to the astonishing total of 85.

It is to be noted in this respect that the Standing committees like the Committee of Whole, "are committees on no definite subjects or branches of legislation; instead they are merely promiscuous groups of members, designated

as A,B,C, and D Committees, and receiving measures assigned to them by the Speaker indiscriminately. This is markedly different from the committees in the United States of America and France. In both these countries the Standing Committees are made up with a view to handling Bills relating to specified subjects e.g. Foreign Affairs, Finance, Commerce etc.

As to the procedure adopted in the Standing Committees the Bill having passed the second reading, it goes to the Committee. It is expected that the Bill will be so scrutinized and polished thoroughly by the Standing Committee so that "except in the case of those that stir the most differences of opinion, they will, on being reported out, consume no great amount of additional working time of the House as a whole. "The Bill may be reported out in an amended form and if the Cabinet does not prefer the amendment, it may give rise to extended discussion at the reporting stage and eventually a compromise may be reached. To avoid all these possibilities the Cabinet would indeed be glad, if ofcourse the time of the House permitted, to have no committee reference at all except to the Committee of the Whole, where the majority party can have its complete sway. In contrast with the situation in practically all American legislative bodies many Bills "die in the Committees" i.e. the Bills are permanently pigeon-holed. But every Bill referred to a Standing Committee in the House of Commons is required to be reported to the House.

Criticism. The Standing Committee system in the House of Commons has stood its worth. But certain suggestions have been made from time to time to improve it. These may be summarized as :—

It is proposed to reduce the number of the members to make its deliberations more efficient.

The members should be thoroughly familiar with the subjects they have to deal with, in order to provide for expertness.

The Committee should adopt more expert means to obtain information from the Civil Servants and department of the Government.

The number of the Standing Committees, it is suggested, should be raised to 10 and every committee should deal with the specific subjects. In this connection, it is pointed out that each committee should as far as possible, correspond to that one of the great executive department.

It is even proposed that by the organization of the Standing Committees, as referred to above, all bills should be sent to the appropriate Standing Committee with the Committee of the whole entirely abandoned.

Committees in the House of Lords.

The Committee system in the House of Lords is broadly similar to that found in the House of Commons. It does not therefore necessitate a detailed description. Besides a Committee of the Whole a large use is made of Sessional Select Committees. In the House of Lords there is also a so-called Standing Committee for textual revision. To this at the beginning of each session every bill after passing through the Committee of the whole, is referred unless the House orders otherwise. Sessional Committees in the House of Lords consist either of all members present during the session or of smaller and sometimes indefinite number of members. "Select Committees are named by the House itself, usually with the power to appoint their own Chairman, and proposals may be referred to them at any time between the second and third readings when additional information is required."

Q. 15. Discuss the Composition, the privileges and the functions of the House of Lords.

(Punjab 1937).

Ans. Composition.

At the present time the House of Lords contains 700 members of whom more than 600 are peers of

Britain, while 16 are representative peers of Scotland and 28 are representatives of peers Ireland. Among the peers of Great Britain, today there are only 20 Dukes, about 28 marquises, about 130 earls and about 70 Viscounts and about 400 barons in all. The House is not composed of hereditary peers alone. Its membership includes in addition 26 Lords. Spiritual-viz the two Archbishops of the Established Churches (Canturbury and York) together with 24 bishops. When a bishop retires from his ecclesiastical office, he loses his right to a seat in the house. By statute it has also been provided that six Lords of appeal shall be appointed peers for life and have seats in the House of Lords. These are chosen from among the distinguished jurists of the British empire. Unlike other members of the House of Lords they are paid an annual salary.

Privileges.

The Lords used to enjoy certain special privileges, which they have gradually lost. The only formal privilege which they still enjoy are those of access to the king for the purpose of discussing public affairs and of recording a protest against any decision of the majority of the House in the journals of the House. Their privilege of voting by proxy was also abolished by a standing order in 1868. The privilege of being tried by their own peers in the House of Lords in case of felony has been abolished by an Act in 1936.

Disabilities.

Members of the House of Lords are under certain disabilities. A peerage cannot be resigned or relinquished. If on the one hand freedom of speech and freedom from arrest while the House is in session extends to the Lords as well as to the members of the lower chamber ; they have no votes at parliamentary elections. Nor, with the exception, of Irish peers, are they eligible as candidates of the House of Commons. Any such Irish peer may be elected from an English (but not from a Northern Ireland) Constituency.

The disqualification from Candidacy does not extend in any case to the members of a peers family, but only to the holder of the title. Even the eldest son of a peer, the heir apparent to the title may be elected to the House of Commons during his father's life time. But on succeeding to the title he must vacate his seat in the lower chamber.

Its functions.

The House of Lords, whom Ramsay Muir calls, 'the Common fortress of wealth' as it is composed of hereditary peers, elective peers, spiritual Lords and Law Lords performs functions of two kinds — viz Legislative and judicial.

As a legislative chamber ;

The House of Lords possessed in the beginning the Sole right to advise the King in law-making. It was not until 1322 that the consent of the Commons was deemed essential to legislation. The powers of the House of Lords upto 1911 were theoretically coequal with those of the commons. But the Parliament Act of 1911 has restricted the power of the House in Several important particulars. The power of the House of Lords over Money Bills has been virtually abolished by it. If the Lords withhold their assent from a Money Bill, for more than one month after it has been passed by the House of Commons, the Bill may become an act on the Royal assent being signified without the consent of the lords. The same Act has also curtailed the legislative authority of the House of Lords. If a Bill other than the money bill is passed by the Commons in the three successive sessions, whether of the same Parliament or not, and is rejected by the Lords, it may on a 3rd rejection by them be presented for the King's assent and on receiving that assent will become a law, notwithstanding the fact House of Lords has not consented to the Bill, provided that two years have elapsed between the second reading of the Bill in first of those sessions and the date on which it passes Commons for the third time.

As a judicial body

The other function of the House of Lords is the judicial one. As a judicial body the house exercises two kinds of jurisdiction viz. as a Court of First Instance and as Supreme Court of Appeal. As a Court of First Instance the House of Lords used to try till 1936 all peers who claimed the privilege to be tried by members of their own orders, but this jurisdiction has now been abolished. Other instances of the House Sitting as a Court of first Instance are (a) trial by impeachment as voted by the House of Commons; but it has now become obsolete (b) trial by a Bill of Attainder which is now rare (c) trial of divorce cases of persons who have Irish domicile (d) cases involving claims of peerage or honour; (e) trial of persons guilty of breach of privilege and (f) deciding cases of disputed elections of Scottish and Irish peers. As the Court of Appeal, this House is the final court to hear appeals from the courts of the United Kingdom; but these cases are ordinarily tried by Lords of Appeal in ordinary, while the Lord Chancellor presides as *ex-officio*. But as a Court of First Instance the House is presided over by the Lord High Steward appointed by the Letters Patent under the Great Seal for each particular case.

Its Utility.

The House of Lords performs some very useful functions as specified below :—

1. It is a revisory chamber in a limited sense. The Lords cannot altogether reject a measure passed by the Commons, but they can postpone it for two years. Many bills are found after two years to have been imperfect. "Time reveals defects, new points of view develop grievances change, people want more or less drastic provisions." Thus the House of Lords by refusing to give assent to a certain Bill can afford time to the public and the Govt. for a cool deliberation of the subject.

2. The House of Lords is a ventilating chamber. It is an admirable arena for the discussion of those large

questions of public policy, questions of imperial interest or social and economic reforms which the commons absorbed in the exigencies of the passing hour, dismisses as irrelevant or academical.

3. The House of Lords is reservoir of Cabinet Ministers. It is very difficult for a Cabinet Minister to administer a department and at the same time to attend the sittings of the House of Commons regularly. So some ministers are taken from the House of Lords. Ministers for Foreign affairs are generally selected from there because a Lord is not to seek election and so is not under the necessity of giving an account of his administration of foreign affair which ought to be kept secret. The Act of 1937 provides that there must be at least two cabinet ministers of the highest rank in the Lords as well as the Lord Chancellor and normally the Lord President of the Council or Lord Privy Seal or both.

Still powerful:

Thus it would be wrong to think that the House of Lords has lost all its powers. It has the right to remonstrate, the right to criticize, the right to deal freely with all measures excepting those that involve the fate of parties; the right to formulate an emphatic protest against legislation of which it disapproves and the right to compel a Government to submit its controversial proposals to more than two years of discussion before it could pass them into a law.

Q. 16. The House of Lords should either be ended or mended. Discuss the statement.

Or

Discuss the plans which have been suggested for the reform of the house of Lords.

(Allahabad 1944. 41 ; Agra 1943, 40, 38)

Ans. No other political institution in England has been criticized to such an extent as the House of Lords. It has been contended that the House of Lords is out of tune,

therefore it ought to be suppressed root and branch. A resolution moved by the Labour Party in the House of Commons (in 1907) reads, "that the Upper House being an irresponsible part of the legislature and of necessity representative only of interests opposed to the general well-being is a hindrance to national progress and ought to be abolished." From 1918, the party's official programme has asked for its abolition. Not infrequently in the discussion of the Labour party, one hears oft-quoted saying of Sieves "if the Second Chamber dissents from the first it is mischievous if it agrees it is superfluous."

The question of reform of the House is the creed of the Liberal party and the traces of it can be found, as far back as the middle of the nineteenth century. The main ground which urge its ending or mending are :—

That it is a predominantly hereditary House, and, therefore, it seems hopelessly out of keeping with the democratic principles.

That it is the worst representative assembly ever created, and its decisions are vitiated by its composition. The element of representation is aristocratic and the peers represent no one except the vested interests. Birrell says, "The House of Lords represents nobody but itself and it enjoys the full confidence of its constituents."

The House is invariably wedded to the principles and policies of a single political body *i.e.* Conservatives, though "the party commands the allegiance of decidedly less than half of the electorate."

The meagre attendance which the House attracts and lack of enthusiasm which the Lords evince in their legislative duties, is an argument by itself to abolish it. During the average session, upwards $\frac{1}{3}$ of the members never attend, and another $\frac{1}{3}$ attend fewer than 10 sittings. Many peers so seldom show their faces in the gilded chamber that the attendants do not know them. When the great rally of the House of Lords was made in order to defeat Gladstone's second Home Rule Bill, one member

was stopped by the door-keeper who asked him if he was really a peer. The answer was "do you think if I weren't, I would come to this blankety black hole."

The general opinion in England is the preservation of the House of Lords, but it should be reconstituted keeping pace with the time and should represent the complexion of the day. Following are the arguments advanced for its continuity :

It usefully does the examination and revision of bills after they pass through all the processes in the House of Commons. This is now more needed, since on many occasions, during the last four decades, the House of Commons has been obliged to act under special rules limiting debate.

The non-controversial bills can be fully discussed by the House of Lords and put into a well considered shape before being submitted to the House of Commons.

The interposition of delay is needed to crystallise public opinion on the bill before it becomes an act. The House of Lords adequately serves that purpose. This interposition is much more needed, it is argued as regards bills which affect the fundamentals of the constitution, or introduce new principles of legislation, or raise issues whereon the opinion of the country may appear to be almost equally divided.

Full and free discussion of large and important issues such as those of foreign policy, at the moment when the House of Commons is previously occupied that it cannot find sufficient time for such discussions, can advantageously take place in the House of Lords. Such discussions, in the House of Lords, may often be all the more useful, where debates and divisions do not involve the fate of the government in power.

The complexion of the House being conservative it compels sober second thought and drives out passion and extreme radicalism.

Its continuance is also advocated on democratic grounds to check the despotism of the single chamber.

House of Lords has been characterized to be a ventilating chamber consisting of the best brains of the country with diversified experience. Many of its members have been trained by long years of experience in the Commons in the diplomatic corps, in India and in the colonies. "In spite of the dead weight which they place on the House there is certainly as much real ability around the Woolsack at Westminster as you find on the front benches of the Upper Chamber in other countries."

In the absence of any constitutional safeguard, as it is in the countries with a written Constitution, it is imperative that there should be a second Chamber with full deliberative and revisory powers.

The English are conservative people, they will not tolerate this historic institution to be wiped off. They will wish to mend it rather than go without it.

Schemes for reforming the House of Lords.

To-day, as in the past the most practical and urgent questions, to which the House of Lords gives rise, concern the structure of the House.

The seeds for reform are found as far back as 1869. But the only piece of legislation which curtailed the powers, rather than membership of the House, was the Act of 1911. The preamble of the Act says "to substitute for the House of Lords as it at present exists a second Chamber constituted on a popular instead of an hereditary nature." The occupation of the Asquith Ministry in the Irish Home Rule problem left the subject unpressed. Then ensued the World War and the issue remained untouched till 1917, when the Prime Minister appointed the Bryce Committee, on the second Chamber problem. The Committee submitted its report in 1918.

The Committee agreed that :—

(i) the membership of the House of Lords was to consist of 327 members ;

(ii) out of 327 members practically three fourth i.e., 246 members were to be elected by secret ballot and proportional representation, by electoral colleges composed of the members of the House of Commons grouped according to 13 regional divisions. The Commoners from each division electing the quota in the Upper Chamber to which their area, on a basis of population was entitled ;

(iii) with a view to preserve the continuity of the old order the remaining 81 members were to be chosen from the whole body of the peers by a standing joint committee of both the Houses ;

(iv) of all the members so elected their tenure shall be for 12 years, and in each group one third of the members were to retire every four years ;

(v) as to the functions the Committee was agreed that the reconstituted chamber ought not to have equal powers with the House of Commons, nor aim at becoming a rival of that body "and that in particular, it ought not to have the power of making and over-turning ministries, or of vetoing money bill" ;

(vi) but when there was a doubt whether the proposal was a money bill or not the question should be settled, not by the Speaker of the House of Commons, but by a joint Committee on financial bills consisting of seven members elected by each house for the duration of the Parliament.

Bryce Committee Report and the plan recommended by it never received the attention it deserved. However, the Government of Lloyd George moved a resolution embodying the proposals of the Bryce plan, but it also received a cold shoulder. The first Labour Government of Ramsay MacDonald did not touch this precarious question, although it was believed by the public opinion that with the advent of this government the programme of the

Labour party to abolish it would be put into practice. With the coming of the Conservative party, again a genuine desire was shown that something ought to be done in the matter, lest the Labour Government of the Future may not take some drastic measures. Matters, however, moved more slowly. The Baldwin ministry did not publicly pledge itself to reform the Chamber. The Labour party when in power for the second time in 1929, dared not touch it again.

In 1932, a Conservative party committee made a fresh study of the subject. Traversing the same ground as covered by the Bryce Committee, it came with a plan for a second Chamber with 320 members. In 1935 when Baldwin came to the helm of affairs the chances of action on the immediate future seemed rather lessened than the reverse." The present Labour Ministry of Attlee did not do much to reform the House except for curtailing its delaying powers from two years to one. The problem of the reforms of House of Lords is always behind the political scene. How long it shall take to be solved cannot be known due to the conservative nature of the English people who do not like to change their institutions till not hard pressed to do so either by circumstances or by the voice of the people.

Q. 17. How did the Reform Act of 1911 effect the powers of the House of Lords?

(Calcutta 1934, 32 ; Agra 1943).

Ans. Before the passing of the Reforms Act of 1911, the House of Lords could by virtue of the long standing conventions and precedents, amend and reject, except the money bills, any bill sent up by the House of Commons. The Reforms bill of 1831 and Gladstone's Home Rule Bill of 1893, were overthrown by the Lords and the House of Commons had no recourse to assert its will. Of course, the Prime Minister could ask the King to create new peers to help the passage of the bill or he would advice the King to dissolve the Parliament. The former was a drastic measure. The latter became the usual

practice and whenever the House of Lords rejected any legislative measure the King would dissolve the Parliament on the advice of the Prime Minister and hold the general elections. If the party in power was again returned in majority, it means the ratification of the issue by the electors and the House of Lords would give way and submit to the public opinion.

This procedure continued till 1909 when a deadlock between the Lords and the Commons arose in such form and produced such a degree of irritation which culminated in the passage of the Reforms Act of 1911. In the autumn of 1909 Mr. Lloyd George, the Chancellor of the Exchequer in the Asquith Government, brought forward a finance bill which aimed to levy certain new taxes, particularly on land. This was defeated by the Lords, because it was a heavy burden on the owners of the large estates and the peers constituted the landed aristocracy of the country. The Lords also rejected many other bills sponsored by the Liberal Government of Mr. Asquith and passed by the House of Commons. The Commons passed a resolution resenting the attitude of the Lords and declared this action to be a breach of the constitution and usurpation of the privileges and powers of the House of Commons. But the House of Lords persisted in their action and the Prime Minister was obliged to ask the King for dissolution. In the general elections, the Liberals were returned in still a greater majority. Again the second time the Commons passed the Bill and sent it for the second time to the Lords. Even at this stage it was feared that the Bill would again be rejected by the Upper Chamber and the King had actually threatened them to create new peers, if they persisted in their hostility. The Lords eventually submitted the Bill to pass.

This, however was not enough. At the time of the general elections the Liberals fought the elections on the rejected finance bill and on the question of "clipping the wings" of the House of Lords. They were determined to specify the powers of the House of Lords by a Parliamentary Act in order to obviate all future difficulties. A bill

was accordingly introduced next year in the House of Commons, which was subsequently passed and is known as the Reforms Act of 1911. The Reforms Act is an important constitutional document which defines the legislative and financial powers of the House of Lords and determines the relations between the two Chambers. Its important provisions, relevant for our purposes are the following :—

1. "If a money Bill having been passed by the House of Commons and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is sent up to that House, the Bill shall unless, the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the royal assent being signified, notwithstanding the House of Lords has not assented to the Bill." This provision stipulated that all Money Bills if passed by the House of Commons should become law after one month of their passage in the House of Commons, even though the Lords may not have considered them.

2. "A public Bill which in the judgment of the Speaker of the House of Commons, contains only provisions dealing with all or any of the following subjects...is to be a Money Bill. Every Money Bill presented to the House of Lords must be certified by the Speaker as such, whose decision is conclusive for all purposes and cannot be questioned in a Court of Law." It sets forth the definition of the Money Bill and it is so defined as to include measures relating not only to taxation but also to appropriations, loan and audits. It was further laid down that a certification of the Speaker of the House of Commons declaring a public bill to be a Money Bill was conclusive and his decision could not be questioned in a court of law.

3. Any other public bill which is passed by the House of Commons in three successive sessions, whether or not of the same Parliament and which having been sent to the House of Lords at least one month, in each case, before

the close of the session, is rejected by that Chamber in each of those sessions, shall unless the House of Commons direct to the contrary become an Act of Parliament on the royal assent being signified thereto, notwithstanding the fact that the House of Lords has not consented to the Bill." It provides that any other public bill, except the Money Bill, passed by the House of Commons in three consecutive sessions, with an interval of at least two years between its first and final passage, should become a law on having received the assent of the King irrespective of the House of Lords approving it.

4. "That the maximum life of Parliament should henceforth be five years." Before the passage of the Reforms Act the life of the Parliament was seven years. In order to bring the House of Commons in closer touch with public opinion than it was before, the maximum life of Parliament was fixed at five years.

Criticism of the Reforms Act of 1911.

The Reforms Act of 1911 is important for various reasons. In the first place it was a deliberate attempt, through the Parliamentary Act, to make constitutional changes of such a magnitude hitherto unknown in England. Secondly, it has been maintained that the House of Lords has been clipped of its financial powers and even with respect to ordinary legislation it has no important voice and it can merely act as a Chamber with a suspensive veto.

But a close examination of the provisions of the Reforms Act and its working of more than three decades disclose that with respect to legislative powers, in spite of its only enjoining a suspensive veto, the House of Lords still exercises great influence and even authority. The House of Lords is characterized to be a ventilating Chamber and its deliberations are guided by the ripe experience of talented persons who can mould the radicalism of the Lower House into something practicable. The nation cannot ignore them altogether. (It is true that the check

of the House of Lords is only suspensive and not absolute, but "the terms required for placing such measures on the Statute Book without the Lord's assent are admittedly not easy to meet and it is interesting to observe that in all the 28 years, from the passage of the Act, not a single measure, financial or otherwise, has become effective without the Upper Chamber's consent"). (Ogg. Government of England, 1939 Ed.)

Further, by repeatedly rejecting a particular measure the Lords arouse the opinion in their favour and as such may influence the attitude of the Cabinet which may necessitate either the measure to be given up altogether or be left to be lost at some later stage. In this context it should be remembered that the time which must elapse is at least two years between the date of the second reading of a bill in the first session of the House of Commons and the final passage of the bill in the third session. The average life of the English Ministry is $2\frac{1}{2}$ years. It naturally becomes impossible in the majority of cases that the period of two years should coincide with the tenure of the Ministry who had sponsored the bill and to which the House of Lords feels reluctant. It may be probable that with the defeat of the bill in the Lords the Ministry may die its own death, and it may be impossible for the new Ministry which comes into power to champion it. The new Ministry may either be opposed to the bill or, it being wedded to its own programme or policy may not put so much premium on the bill. The bill is thus, *ipso facto*, lost by the check put up by the House of Lords.

In actual practice the Act also multiplies the contention that it has amounted to the paramountcy of the House of Commons. It is not the House of Commons which has gained power. It is the Cabinet, since all legislation is the handiwork of the Cabinet—there being no possibility of a Private Member's Bill or a Private Bill being pushed through unless it receives the support of the Cabinet. Ogg has further pointed out that "the sheer legal power of the House of Commons to enact legislation.

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unilaterally may serve as a sort of gun behind the door. But the give and take of law making goes on pretty much as before.

Q. 18. It is said that the Ministers in England are amateurs in the art of Government, therefore, the real administration is carried out by the members of the Permanent Civil Service. How far do you agree with this statement. (*Allahabad 1943, 42 ; Nagpur 1944.*)

Ans. The underlying idea of a parliamentary form of Government is that the ministers who rank among the majority party in the Parliament are the heads of the different departments of the government. The allotment of the different portfolios to the ministers are, ofcourse made with some regard for the personal aptitudes, but often if not usually, their appointments have little connection with the nature of the work to be performed in their particular departments. Frequently they have little or no experience with governmental administration in any form. The selection of a minister is more a party question rather than efficiency in the art of administration. Moreover, the department over which the ministers find themselves to boss perform so many functions and render so many different services that it is well nigh impossible for any single person to qualify as an expert in all. Added to all these there is another very important reason. While in office the ministers have to devote major part of their time in the meetings of the Parliament and Cabinet, party, social and other activities. They seldom find sufficient time to devote properly to their departmental duties. The brief and precarious tenure of their office also accounts for their ignorance about the various technicalities. The net result of all this is that the real executive work is carried out by the Permanent Civil Service.

It is admittedly true that the real governors in the United Kingdom are the laymen with no knowledge of the department they conduct. "A youth must pass," says Sir Sydney Low, "an examination in Arithmetic before he

can hold a second class clerkship in the Treasury but a Chancellor of the Exchequer may be a middle-aged man of the world who has forgotten what little he ever learnt about figures at Eton or Oxford and is innocently anxious to know the meanings of those little dots." Disraeli offered the Board of Trade to a man who wanted instead the Local Government Board. "It does not matter," said Disraeli, "I suppose you know as much about trade as the First Lord of the Admiralty knows about ships." "I am Chancellor of the Exchequer," wrote Robert Lowe to his brother, "with everything to learn." When Sir Edward Carson was made First Lord of the Admiralty in 1917, he declared that his only qualification for the post was that he was "absolutely at sea." The problem became still more serious when in 1924 the Labour party first came into power because none among the ranks of the Labour party knew the art of government. In the Conservative Ministry of Stanley Baldwin of 1924, the Foreign Secretary Austin Chamberlain was not an experienced diplomat and Mr. Winston Churchill, the Chancellor of the Exchequer was a politician and soldier. So were Sir John Simon as the Chancellor of the Exchequer and Lord Halifax as the Foreign Secretary. Likewise in the last Coalition Cabinet, *inter alia*, neither Sir John Anderson nor Sir Stafford Cripps were better in their departments.

But the crux of the entire problem is responsibility of the Ministers to the Parliament. It is true that the departmental head, who is well informed on the work to be carried on under his direction, is to be preferred. But this does not mean that he can or he should, be expected to qualify as an expert or a technician. In every department there is always division of labour and score of intricate problems creep up which demand high order of practical and technical proficiency. Even the calibre of experts with permanent tenure fail to achieve all. Then how can it be expected of a minister, however efficient though he may be in his department, to master everything.

As a matter of fact the business of a minister is not to do the work of the department, "but only to direct and

frame general policies and see that they are carried out by the staff employed for the purpose." There are many advantages, if the head of the department may be a lay man. A lay man has a broader outlook whereas the outlook and mental attitude of an expert is compartmentalised. "The Cabinet is the bridge," according to the late Mr. Ramsay MacDonald, "linking up the people with the expert, joining principle to practice. Its function is to transform the message sent along sensory nerves into commands sent through motor nerves. It does not keep departments going; it keeps them going in certain direction." An amateur minister may, again, serve as an intermediary between the other and his own department and the House of Commons. These wider things, with the wider outlook and dispassionate thought over the matter, he would not be able to do, if he were to belong to the rank and file of the expert persons belonging to the permanent cadre who are predisposed to certain things with bureaucratic prejudices. Under bureaucracy public opinion does not find any favour or sympathy whereas the responsible ministers thrive upon it.

It is, therefore, not essential that the ministers must be experts in the various problems which they have to tackle. There is no doubt that the Permanent Civil Service is the reservoir of experience and knowledge, and they furnish the Cabinet and the Parliament with much of the information which is required in shaping and enacting policies on a multitude of subjects. But the members of the Permanent Civil Service do not dominate the administration and fix the whole tone and character of the government. At the head of every department there is a responsible minister who rules. It is he who is responsible for carrying out the policy and the Permanent Civil Service must adjust itself with the policy of the government in power. If ministers were to be under the thumb of the Permanent Civil Service, the public opinion must become adverse, the ministry must go out. It is the regard for the public opinion which is the life spirit of a responsible form of Government and this very factor determines the

part which the members of the Permanent Civil Service ought to play and do play in the governmental machinery. Permanent Civil Service thus is certainly a very patent factor which influences the governmental activities of the day in Great Britain, but the decisive factor even behind the acts of bureaucracy is the voice of the people. It is obvious thus that if there is at all a dictatorship of bureaucracy in Great Britain, it is a democratic dictatorship.

Q. 19. Discuss the part played by the Permanent Civil Service in the administration of the English Government.
(Nagpur 1948)

Ans. The executive in the broader sense of the term means all those officials of the government who are engaged in the execution of the laws of the State, except those who make or interpret these laws. The work of the government would never be done if there were only the ministers who had the different departments. It is true that each department of administration in the British Government is headed by responsible minister, but it is not the business of the minister to do the work of his department. His business is to see that somebody else does it. Those who do it are known as the members of the Permanent Civil Service. They have a permanent status and tenure. They are chosen for their administrative capacity alone. Neither are they the members of the Parliament, nor must they take part in the political campaign, nor do they change when a ministry goes out of office. Public administration is their life work and it is that body of men and women who translate law into action from one end of the country to the other and bring "the National Government into its daily contact with the rank and file of the citizens."

Permanency of tenure give to the members of the Civil Service adequate knowledge of their work and necessary experience which makes every one specialized in his work. Permanent civil servants are, therefore, the reservoir of experience who furnish the Cabinet and the Parliament with all the information necessary for shaping and enact-

ing policies on a multitude of subjects. "Less in the public eye than the ministry, this army of functionaries is not a bit less necessary to the realization of the purpose for which government exists." As a matter of fact without the permanent civil servants "government would be only a jumble of rules and regulations suspended in mid-air, without force or effect upon the people."

Such being the importance of a Permanent Civil Service, entrusted as they are with multifarious duties of expertness and thorough knowledge on the various problems, it is necessary that these public servants must be persons endowed with ability, efficiency and calibre. In order to achieve this end it is essential that their recruitment in the service should be on merit rather than on favouritism. Before the Haileybury's experiment, civil service in England was the least desirable, because majority of them entered the service through recommendation pure and simple, and discounting merit. This meant a class of vested interests and the public opinion severely condemned it. But by 1853, the Trevelyan Report recommended that "as an indispensable means of attracting able young men into the service, admission should be placed on a basis of competitive examinations open to all and administered by an independent Central Board." In 1855, by an Order in Council, a Civil Service Commission was created with three members to conduct competitive examinations. In 1873, an epoch making Order-in-Council completed "the edifice by making open competitive examinations obligatory practically throughout the service" and this policy of recruitment even today remains the same, except in the following cases :—

- (1) where a direct appointment is made by the Crown.
- (2) Where the vacancies are filled up by promotions.
- (3) Where expert technical qualifications, peculiar to the conditions, are necessary.
- (4) In the case of menial staff, *e.g.*, peons etc.

Following is the pyramid like nature of permanent civil services in the British departments of the Government :—

(a) In the first place there is a permanent Under-Secretary with one or two assistant Under-Secretaries. These are direct posts and not open to competition because their work requires technical qualifications. Appointments to this rank are made by direct nomination or promotion.

(b) The principal clerks who are appointed by promotion from the first class clerks.

(c) The first class clerks are recruited by open competition. Persons between the age of 22 and 24 are eligible for it. This examination is at par with the Indian Civil Service and Colonial Service examinations.

(d) The clerks of the Second Division. The age of eligibility is between 17 and 20 and the standard of examinations is not so high as that of the first class clerks.

(e) The assistant clerks are recruited from among the boy clerks by means of departmental competitive examination.

(f) Boy clerks between the ages of 15 to 17 are recruited by competitive examination of preliminary nature.

Criticism.

The British Civil Service has been lavishly praised for its efficiency and exceptionally high rating. But it does not mean that it is perfect. Various defects have been from time to time pointed out by the official investigations.

There is evidence to prove that merit has often been discounted and the evils of patronage have not been quite so completely eradicated.

It has further been maintained that the nature of examination is too academical and the entrants are recruits with no knowledge of the department concerned.

Officialism or red tapism is the rule and not the custom and it is one of the defects of bureaucracy. A certain amount of exactitude, of course, is essential in the obser-

vance of regulations. But, it is pointed out, "excess in this direction means multiplicity of forms and files and endorsements and records so that the transaction of business is impeded rather than eased.

Another defect which is inherent in bureaucracy is "Self-aggrandisement." Lord Hewart pointed out that "no doubt in the main, unconsciously, the Permanent Civil Service is becoming more and more impatient of the sham facade of democracy behind which it works, and is showing progressively greater skill in using the forms of Parliament and the convenient doctrine of ministerial responsibility, as a cover for steady increase of the power of the departments."

Another danger is that of "Departmentalism"—the danger of splitting up the work of the government into different isolated and self dependent sections, each pursuing its own ends without any regard to the rest. A system as that in England where bureaucracy, according to Ramsay Muir, "is very powerful and is organized in distinct departments, must always need firm control and criticism to ensure efficient co-ordination and to avoid the waste of effort and of money."

(6) Ogg has pointed out another defect. He says that as the members of the Permanent Civil Service "become more organized and more group conscious, (they) will be increasingly tempted to make use of their power, as unionised employees and as voters, to force unjustifiable legislation concerning pay hours, pensions, and other matters of interest to them as a class.

Strong Points of the British Civil Service.

In defence of the British Civil Service it is maintained that there is almost a uniformly high quality of men and women attracted to the service. As Ogg remarks. "Some are impelled by a sense of civic duty; some are drawn by the prospect of a career in a field in which the way is open for talent and industry, irrespective of family connections; some no doubt, are appealed to by a profession

which promises a steady and assured income, without much risk, instead of worry and competition, the glittering prizes or doleful failures, common to the outside world." At all events the civil service in England on account of its efficiency has democratized the unitary form of Government. Had it not been for the untiring services of this army of experts, the Cabinet form of Government in England would have become a farce.

It must also be noted that officialism, narrowness of conception and the departmentalism, the various defects referred to above, have been counter-balanced by the ministerial responsibility. The civil service in England is very responsive to public opinion and its members adjust themselves with the changing times and with the policy of the party in power.

Then there is generally excellent *esprit de corps* which the service has always displayed in particular, the interest in and sense of responsibility which it has exhibited for its own improvement. The Institute of Public Administration, and likewise a Society of Civil Servants, open to all grades of the services, and aimed at maintaining the high ideals and traditions of which civil servants are justly proud, is but one of the many indications of this spirit."

It is true that the British Civil Service plays an important role in the administration, legislation, and finances of the country. But they do not dominate and fix the tone and character of the Government. The scathing criticism of the Bureaucracy by Ramsay Muir does not hold good, when we know that at the head of each department there is a responsible minister. It is not essentially Bureaucracy. Bureaucracy, according to Laski, "is the term usually applied to a system of Government, the control of which is so completely in the hands of the officials that their power jeopardizes the liberties of ordinary citizens." There is nothing of the kind in England. Bureaucracy does not mean the Permanent Civil Service. Ramsay Muir takes Bureaucracy synonymous with the Permanent Civil Service when he says that "Bureaucracy

is like fire invaluable as a servant ruinous when it becomes the master." Permanent Civil Service is Bureaucracy when it becomes the master of the show and jeopardizes the liberties of the citizens. In England there is a highly organized and efficient army of Civil Servants working under the instructions and in pursuance of a definite policy of the responsible ministers. They cannot jeopardize the ordinary liberties of the citizens, because there is some one else to pull them up and who can undo what they have done.

Q. 20. The Lord Chancellor is the "greatest dignitary in the British Government, the one endowed by law with the most exalted and most diverse functions, the only great officer of State who has retained his ancient rights, the man who defies the doctrine of the separation of powers more than any other personage on earth." Blucidate.

Ans. The office of the Lord Chancellor in England is the legacy of the past. Originally in the eleventh century he used to be the king's scribe and did his work behind the screen (*cancelli*) in the King's chapel. It is from the *cancelli* that the word Chancellor carries its root. But in time the officer came to be recognized as a trusted adviser of the King "especially in matters touching the royal grace"—the redress of grievances which lays the foundation of the Law of Equity. In 1877-76 when the fusion of law was brought about, control of practically all judicial appointments and positions passed into the hands of the Lord Chancellor.

His powers and functions may be summarized as follows :—

He recommends to the Crown the appointment of judges in the higher courts and himself appoints and removes the country court judges and justices of the Peace.

Lord Chancellor is the Chiefs Judge in the Chancery division of the High Court of Justice and in the court of Appeal.

He presides at sessions of the Law Lords when they exercise the judicial functions of the House of Lords.

He is the chairman of the Judicial Committee of the Privy Council.

Lord Chancellor is the principal legal adviser of the Cabinet and all the legal problems and legal issues which come before the Cabinet are referred to him for guidance. Naturally the Lord Chancellor is always a jurist of distinction.

He wields extensive ecclesiastical patronage.

He presides at the meetings of the House of Lords. The Lord Chancellor is usually a peer. If he is not he is created one. This does not mean that a commoner cannot be chosen to that office.

In the words of Ogg "To the Lord Chancellor indeed are assigned more tasks than any man can well perform" The office combines the executive functions because he is a member of the Cabinet, though without an executive department assigned to him. He is a member of the House of Lords if he is a peer which invariably he is, and apart from presiding at the sitting of the House, he participates freely in its debates. It may here be pointed out that being a member of the Cabinet, the Lord Chancellor is a party figure, which puts him in sharp contrast to the Speaker of the House of Commons. Finally he is an important personage in the judicial framework of England. He does not only preside over the different sessions of the law courts but also is the appointing authority of the judges in the lower tribunals. He is also the principal legal adviser of the Cabinet, "even though that body's official legal advisers are the 'law officers' of the Crown.

It shall, therefore, appear that Lowell remarked with truth that the Lord Chancellor is endowed with most diversified functions and he "defies the doctrine of the separation of powers more than any other personage on earth."

These diversified functions of the Lord Chancellor had been subjected to severe criticism. The Haldane Committee made specific recommendations for a change in the functions of the Lord Chancellor. It was recommended that he should be relieved of the administrative work and his Speakership of the House of Lords. He should only remain, it was suggested the principal adviser of the Cabinet and should also retain charge of the President of the judicial committee of the Privy Council."

Q. 21. Explain the nature of Local-self-Government in England.

(Agra 1937 ; Punjab 1939, 1937.)

Ans. Blackstone, a renowned English Constitutional writer, maintained that "the liberties of England may be ascribed above all things to her free local institutions. Since the days of their Saxon ancestors, her sons have learned at their own gates the duties and responsibilities of citizens." The real purpose of the local government is to make the country better to live in. Without them there is no civic consciousness. It is now universally recognized that the better the local administration is and the greater scope the citizens have to mould this administration, the more healthier and politically conscious the people are. Local Government is a prelude to democracy. In the words of De Tocqueville," Local Assemblies of citizens constitute the strength of citizens Town meetings are to liberty what primary schools are to science ; they bring it within the people's reach ; they teach men how to use and how to enjoy it." A nation may establish a system of free government, but without the spirit of municipal institutions it cannot have the spirit of liberty." It is in the village panchayat, the municipality and the district board that the people most easily learn the art of governing themselves. Until you learn to govern, or be governed by, your own neighbour it is useless to expect that you can successfully govern the people afar off. It is for this reason that the tree of liberty has its roots in the local institutions.

Local institutions in England are more truly democratic than in the countries of continental Europe. They are free within their own areas and possess a great degree of autonomy and, therefore, contribute more substantially to the political education of the people. The statement of Sydney Webb that "Local Government (is) as old as the hills" truly represents the conditions as exist in England. Three main features are prominent in the present day local government in England. In the first place the system is in its fundamentals deeply rooted in the past. The English system of local government, as Dr. Munro puts it "is the result of a long historical evolution, for the most part unguided and unplanned," the traces of which can be conveniently found in the shires, hundreds, townships and boroughs of the Saxon times. In the very beginning community feelings have always been strong among Englishmen, "who have guarded no right so jealously than that of managing their local affairs in their own way. There is much in common in the spirit and the machinery of the English local government to-day, to remind one of the old days. Government in England has progressively advanced to adjust itself to the changing conditions from century to century and has undergone significant changes in very recent years. The countries and the boroughs of the past still continue but with essentially changed organization and functions. Finally, the local bodies are autonomous in their respective areas and the English people still cherish their heritage of the civic life, but their powers and functions are regulated increasingly from London, "on broadly uniform lines for England and Wales, although with wide allowance for differences of historic experience in other parts of the realm." Except for London, a single pattern exists almost as uniformly in England and Wales as in France.

Local Government Areas.

There are six local government areas :—(1) The Administrative County, (2) The County Borough, (3) The

Municipal Borough, (4) The Urban District, (5) The Rural District and (6) The Parish.

The Parish.

At the bottom is the parish, but there are different kinds of parishes—civil, ecclesiastical and land tax. For our purpose we are only concerned with the civil parish. Civil parishes are further divided into urban and rural. The urban parish has merged its administration into that of the Urban District Council, but the rural parish still remains a local governing unit. The rural parishes vary in size and population. A rural parish having a population of more than 100 people has ordinarily a Parish Council. If the population is less than 100 inhabitants, a Council can be set up with the consent of the County Council, which can also group several of such parties under one parish. A Parish Council may consist of not less than 5 members and not more than 15. All the members are elected at the annual parish meeting in March for a period of one year only. It is provided that at least 3 meetings of the Parish Council must be held every year. The powers of the Parish Council are varied and fairly comprehensive, but these are under the control of the two higher authorities—the Rural District Council and the County Council. The Parish Council acts as minor education authority and may provide public works, recreation grounds and allotments. Parish accounts are annually limited to 3d. in the £ and the Parish accounts are annually audited by District auditors of the Ministry of Health.

Rural Districts.

All rural parishes are grouped into Rural Districts which have their own representative councils. The District Councils consist of representatives of the parishes, each parish of 300 citizens sends one Councillor. The Councillors are elected for a term of three years, one third of the representatives retiring every year. The Chairman of the Council is also the Justice of the Peace and is elected by the Councillors either from amongst themselves or from

outside. The Council meets at least once a month, but can also hold extraordinary meetings. Most of the work of the Council is done by the Committees. In every Rural District there is a medical officer, an Inspector of Nuisance, a Surveyor, a Clerk, a Treasurer and a Collector. The functions of the District Councils vary but generally they are entrusted with the work of sanitation, water supply, public health, management of minor roads etc. If the Council does not actively perform its functions, the Central Government can intervene and take necessary action as it deems advisable.

The local authority of the Rural Districts Councils has considerably decreased, because of the industrialisation of the country.

Urban Districts.

The constitution and powers of the Urban District Council are more or less similar to that of the Rural District Council. But the area under the jurisdiction of the latter is greater than that of the former. An Urban District has a Council which consists of at least one Councillor from each parish. The functions of the Council are many including highways, housing, sanitation, public health and licensing. "An Urban District is like a borough, a thickly populated area but has not been given a borough character by a Municipal Corporation Act. The frame-work of the District Council is similar to that of a borough. All boroughs are *ipso facto* Urban Districts."

Counties.

England still clings to that county system of the past that has come down through the centuries. The counties are of two kinds, historical and administrative. The former are 52 in number and they form constituencies for parliamentary elections. These counties have neither a council nor an elective body and the purposes served by the historic county are not so much of the local area, although each of these still finds the Sheriff, the Lord

Lieutenant and the Justice of Peace, all appointed by the Crown.

The administrative county is an "incorporated territory" like the borough. The Local Government Act of 1888 created 62 administrative counties with some what different boundaries. The Act of 1888 also created many county boroughs, that is, boroughs which were given the status of counties for administrative purposes. "This means that any place having the rank of a county borough is not subject to the jurisdiction of the administrative county within which it is situated but remains parts of the historic county."

The administrative county is administered by a County Council consisting of a Chairman, Aldermen and Councillors. For purposes of election every county is divided into many electoral areas and each electoral area returns one representative in the Council. The number of the Councillors varies from county to county according to the variations in population. The Councillors in a County Council elect one-sixth of their total number as Aldermen. There is no rigidity in this and Aldermen can be taken from outside too. The Councillors are elected for 3 years and the Aldermen for 6 years, half of the latter retiring every three years. The Councillors and the Aldermen elect a Chairman either from amongst themselves or from outside. The County Council meets at least four times a year.

The County Councils inherited by the Act of 1888 wide administrative functions. It supervises the work of the Rural District Councils within its jurisdiction, is responsible for the maintenance of main roads, bridges, asylums, reformatories and industrial schools. It is the sole authority in matters of education and regulates old age pensions. It is also entrusted with some duties with reference to county policing. The County Council has the power to levy a county rate or tax. Most of the work of the County Council is done through Standing

Committees and every Council has more or less one Standing Committee.

The County Councils and their Committees do not usually concern themselves with the routine work of general administration. Their work is to frame the general policy. The routine work of administration is carried on by the permanent staff of the County Councils, chosen on a non political basis. This staff includes a county clerk, treasurer, health officer, surveyor and various other functionaries. They are appointed by the County Council and are not under Civil Service rules. The Council is empowered to remove any one of them, with the exception of a few like the health officer, at any time. Munro remarks in this connection "The efficiency of county administration in England contrasts rather sharply with the notorious inefficiency and wastefulness in many parts of the United States. The reason is partly to be found in the fact that the administrative work of the English county is entrusted to men who are chosen for their competence and do not have to play politics in order to hold their jobs from year to year. But it is also due in part, to the intelligence, interest and industry of the County Councillors."

The Boroughs.

It has already been pointed out that an Urban District is, like a borough, a thickly populated area but has not been given a borough character by a Municipal Corporation Act. "The framework of the District Council is similar to that of a Borough. All boroughs are *ipso facto* Urban Districts." Nowadays nearly four fifths of the people of England and Wales live in towns and, therefore, under borough government. But how does an urban area become a borough? Of course by giving it a charter and thereby giving to that area the status of a municipal corporation and bringing it under the provisions of the consolidating Local Government Act of 1933. Previously no standard of population was maintained in the grant of charter. The result being that a "fifth or more of the

338 boroughs of today have fewer than 5,000 inhabitants, being exceeded in this respect by numerous places which still remain merely urban districts." Now-a-days an unwritten law forbids the chartering of any district whose population is not at least 20,000—

The borough acts through a Borough Council or Town Council. This is composed of a Mayor, Aldermen and Councillors all sitting together. The Councillors are elected by popular vote for a term of three years. The large boroughs are divided into wards and the Councillors are chosen under the ward system. The Councillors then choose Aldermen, either from among themselves or from outside equal to one-third of their total number for a period of six years, half retiring every three years. Every member of the Council, whether he be a Councillor or Alderman, has an equal vote on all questions. The Aldermen do not enjoy any special privileges, but because of their longer term of office and greater experience they exert greater influence in moulding the policy. The Council elects its own Mayor for one year and is eligible for re-election. The post of a Mayor is regarded as of great honour and generally a new man is elected. "He is not elected to bring a new policy, to represent a party, or to dominate the Council, but to preside at its meetings and to take the lead in carrying its policy into effect." He is just the titular head of the city and the premier citizen, who represents the city on all ceremonial occasions. A Mayor, however, is required to possess "generosity, affability, and a certain sense of proportion."

In all matters connected with the Government of the Borough, the Borough Council is the sole legal authority, of course subject to the supervision of the Government at London. The powers of the Borough are derived from Common Law, Municipal Corporation Acts and statutes thereof and from local and private Acts of Parliament. The Borough Council also derives powers from orders of certain central departments which are authorised by Parliament for the purpose. The Council performs its

functions through standing committees of statutory and optional nature. Every Council has from 1 to 12 such committees. Special committees may also be appointed for special purposes. There are also joint committees in which the members of the Borough Council and County Council function together although their work is only of an advisory nature.

The Town Council has the power of passing bye-laws some of which require the approval of some central department. The Council is the chief authority in matters of finance. It acts as the custodian of the "Borough Fund" which consists of receipts from public property, franchises, fines, fees etc. It also levies 'Borough rates' on the rental value of real property, borrows money on the credit of the municipality etc. The Administrative work of the Council includes building of roads, management of water supply, public health, provision of recreation, police and fire protection, maintenance of parks and public buildings, supervision of education, and school buildings, the grant of licenses, the care of the poor etc. It is a local sanitary authority. It appoints and constructs workers, houses, regulates trade and appoints high officials.

Criticism.

Excellent as the general scheme of local government in England, it is undoubtedly, not immune from criticism and doubt. Although local government in England is the result of steady and gradual evolution, yet to-day it is exactly not what it was in the past. A hundred years ago, countries and boroughs knew but little regulation or control from London. Counties, boroughs and parishes did about as they pleased. But it is not so today. There is a progressive increase of regulation and control from the above. Many reasons may be accounted for it. Changing social conditions and broadening conceptions of the functions of Government caused one new activity after another to be taken up, inviting control on uniform lines. In the past all the local areas were financially self-sufficient. Now the Parliament has started the practice

of granting money to the local authorities in aid of education, police and other services. Naturally, with this financial aid the right of the Central Government to inspect these services and their administration becomes established.

The work of the central supervision is now vested, for the most part, in the hands of six departments at Whitehall—the Ministry of Health, the Home Office, the Board of Education, the Ministry of Transport, the Board of Trade and the Electricity Commissioners who are attached to the Ministry of Transport. These departments give necessary information and advice to the local areas. They hear complaints, make investigations, settle disputes and order remedies to be applied. They lay down rules and regulations. “as to organization, procedures, methods, objectives qualifications, and equipment which the local authorities must observe.” They check the excessive use of authority allowed to them. They exercise control over the administration of poor law, the system of social insurance, the audit of accounts, the approval of local borrowing, and the care of public health. “All told, however, central control is both wide and deep; not only so, but it is steadily penetrating to new phases and levels.”

It shall, thus appear that the English system of central control over the local bodies is a compromise between the rigid system in France and the flexible system in the United States. This central control has been subjected to several criticism. But Dr. Finer in support of the control says that “the Central Government is not unnecessarily meddlesome; it respects the freedom of the local governing bodies, and would prefer to see this exercised properly without the need to intervene.” So long as these local bodies keep within their legal powers they are free from central interference, and “when they unconsciously exceed their authority, the uplifted hand of the national government ought to be welcomed and not resented.” It must however be admitted that the idea underlying the local government is nullified, howsoever,

justifiable and proper that control and supervision may be. The local bodies, as a matter of fact are better judges of the local needs and requirements than either the members of the Parliament or the departments of the Central Government functioning at London.

Q. 22. Write short notes on the following :

- (a) Privy Council
- (b) Ministry
- (c) Woolsack
- (d) Kangaroo.

Ans. Privy Council ordinarily seems something unimportant. But a closer study discloses it to be historically rich in significance. This antiquated institution finds its traces in the *Curia Regis* of the Normans and in its present form it emerged in the fifteenth century as an off-shoot of the Permanent Council. It represents the final product of that oft-repeated process of subdivision and devolution by which the functions of advising the King and carrying on the Government in his name, were kept in the hands of a small but workable body.

The Cabinet is the child of the Privy Council which came into prominence on its becoming an unwieldy body. The Privy Council is a body of Royal Advisers, which still, in theory control the actions of the Crown. Most of the acts of the Crown are "by and with the consent of the Privy Council." But in point of fact it has no advisory functions. These functions rest with the Cabinet. Every Cabinet Minister before assumption of his responsibility is made a Privy Councillor and remains as such for the whole of his life. The capacity of adviser to the King only remains so long as he remains the member of the Cabinet. For others it is only a title of distinction.

As it stands today Privy Council consists of 320 members. Apart from the present and the past members of the Cabinet, the title Privy Councillor is conferred upon

retired judges, many eminent peers and men of distinction in arts, literature, science, politics etc. In India this title had been conferred upon the Pt. Hon'ble Mr. S. Sastri, the late Sir Akbar Hydari. Mr. M. R. Jaykar and Sir Tej Bahadur Sapru.

With the rise of Cabinet, the Privy Council is said to have become played out. But this does not mean that it is unimportant and an unessential institution. Except when a new sovereign is to be crowned or some other solemn ceremony is to be performed it, as a body, seldom meets. The meetings which usually accounts for 20 or more in a year transact the business and is known as the King in Council. The work generally dealt with is : —

1. All ministers taking their oath of office.
2. It is only here that sheriffs are appointed.
3. The various Orders in Council are issued as a result of the deliberations of the Privy Council.
4. Proclamations, summoning, proroguing and dissolving the Parliament, orders regarding the Crown colonies, orders granting Charters to Municipal Corporations, orders pertaining to Permanent Civil Service, wartime orders etc. emanate from the meetings of the Privy Council. The historic Order in Council of 1931 authorizing Ramsay MacDonald to exercise Control over national expenditure for one month, was the result of this body.

Be it noted however, that the Privy Council is no longer a deliberative or advisory body. The last occasion when the Council exercised its deliberative as well as advisory functions was 1714; nevertheless, it remains the ultimate executive authority. The vitality of the Privy Council is more evident in the Judicial Committee of the Privy Council which was created by the Statute of 1833.

Ministry.

Cabinet and Ministry are often muddled together and the names used interchangeably. But Cabinet and

Ministry denote two distinct parts of the Governmental machinery. Broadly the distinction is two fold :—

- (a) composition ; and
- (b) functions.

The Ministry consists of all the officials of the Crown who have seats in the Parliament, are responsible to the House of Commons and hold office so long as they retain the confidence of the legislature. This character of political nature is the main distinction between the ministry and the members of the Permanent Civil Service. The ministers are, therefore, those who have to do with the formulation of policy and the supreme direction of carrying that out.

But like many other paradoxes in the English Constitution, it is not correct to say, that all the ministers are entrusted with the task of formulating the policy of the Government. There are ministers who have very little to do with the policy and others who do not administer; "which is tantamount to saying that the line which divides ministerial from non-ministerial offices has been drawn by usage, and even accident, not by logic"

The ministry generally consists of 60 to 65 members divided into four or five main groups. The first are the actual or the nominal heads of the Departments. Then there are high officers of State who, however, are not in charge of any Department e.g. the Lord Chancellor, the Lord President of the Council, Lord Privy Seal etc. Thirdly there are Parliamentary under-secretaries-usually one in each department and the official spokesman of the minister in a House to which the minister does not belong. The fourth group consists of the government whips and finally there are a few officers of the Royal Household.

The ministry, therefore, is the wheel which encircles the Government in England whose tenure is ensured so long it commands the confidence of the House or till the life of the Parliament. Within this wheel is a body of 20 to 25 members who are the real bosses of the entire

governmental show and this wheel within a wheel is known as the Cabinet.

Woolsack. The term Woolsack, in the English Constitution, denotes the chair which is occupied by the Lord Chancellor while presiding over the meetings of the House of Lords. The term originated during the times of Queen Elizabeth when a statute was passed prohibiting the export of wool from England. The judges of the House of Lords in order to give a practical example of their patriotism had their benches stuffed with it. Woolsack or the chair on which now sits the Lord Chancellor is placed outside the precincts of the Chamber, on the theory that if the Lord Chancellor is not a peer, he is not a member of the House and as such, has no access to it. But generally the Lord Chancellor is a peer and if he is not he is made one forthwith.

Kangaroo.

It is often seen that during the second reading of the bill in the House of Commons the opposition wilfully tries to throw obstacles in the termination of debate. This obstructionist policy was adhered to early in the history of the Parliamentary bodies. It was, therefore, found necessary to provide ways and means of bringing the debate to a close. Different methods of closing the debate were tried from time to time and Kangaroo is one of them. This method of closure authorises the Speaker to single out those proposals which he considers more appropriate for discussion and to pass over the rest. Just as a Kangaroo hops, so does the speaker hops from proposal to proposal and therefore, this name. Before 1919 this authority was rarely conferred on the Speaker and the Chairman of the Committees. But in 1919 it was conferred permanently and for all bills. It has, accordingly now become a regular feature of the English Parliamentary procedure and is the device which is much in use. Closure by Kangaroo imposes heavy responsibilities on the presiding officer, nevertheless it is a tribute to the impartiality of the Speaker that it has never been abused.

Constitution of France

CONSTITUTION OF FRANCE

(THIRD AND FOURTH REPUBLIC)

Q. 1. Give the characteristics of the French Constitution.

Ans. France has been called the laboratory of the constitutional experiments. Between 1789 and 1875, she adopted and then rejected nearly a dozen constitutions. All these constitutions had been so full, so explicit and so letter-perfect that one has simply to admire the logic of a Frenchman. But the Constitution of 1875 is, on the other hand unsystematic and fragmentary in character and lacks all logic. These short-comings of the Constitution of the Third Republic arose out of the give and take method by which it was made. The Constituent Assembly consisted of hostile and heterogeneous parties who had nothing in common. But they were determined to get the country out of the political chaos in which it was then stranded. The French Constitution was, therefore, a product of compromise—"the handi-work of a body of men, who, taken as a whole, and because of the political situation" then prevailing in France, "felt no enthusiasm for their labour and took no pride in its results." The monarchist party which was in majority in the Constituent Assembly was obliged into writing a Republican Constitution. But at the same time it neither wanted nor expected "that constitution to endure; and viewing the instrument as a makeshift, it had nothing but apologies for it. "The Constitution of 1875, says M. Barthélemy, "is a hang-dog Constitution, 'Cinderella slipping noiselessly between the parties who despise of it.'"

Characteristics of the Constitution.

Following are important characteristics of the French Constitution of 1875 :—

~~The fragmentary character.~~

The French Constitution is fragmentary and does not consist of one single document like that of the United States of America. The French Constitution is contained in three Constitutional Laws passed on February, 24 and July 16, 1875 respectively.

A made constitution

It was made at a particular period of time by the Constituent Assembly specially elected for framing the Constitution of the country. It is accordingly, not the result of evolution. But like the English Constitution it precludes neither precedent nor growth. Besides the three Constitutional Laws and the two Revisory Laws, there are several Organic Laws. The Organic Laws differ from the Constitutional laws in as much as they may be amended or repealed in the ordinary course of legislation whereas the repeal or amendment of the Constitutional Law requires a special procedure. The Organic Laws have been passed to deal with the constitutional issues of a minor character. The three Constitutional Laws and even the two Revisory Laws form the fundamental basis of the Constitution. Then there are various ordinary laws and customs. "These are the things that put flesh on the skeleton, or to abandon the figure transform an outline into a system." There are many customs and precedents which guide the working of the executive and the Legislature.

The elements of continuity.

Although it has been said that the French constitution was made, but it must be remembered that the Constitution of 1875 is the great continuity of the various epochs in French constitutional history. It is the product of an evolutionary process extending over nearly a century, retaining some of the important features of almost all the constitutions with which France experimented. Barthélemy says, "Nearly all the forms of government which have succeeded each other in France have left behind them, as it were certain fertile alluvial deposits. The restoration

led to her parliamentary government and the principles of a free country. The July Monarchy developed, and consolidated these principles, and the laws still in force, dealing with connection, etc. The Republic of 1846 introduced the principle of unification, and definitely established the principle. The Second Empire is responsible for the machinery, the liberty of coalitions, and the distribution of authority between prefect and minister. The National Assembly gave France her departmental organization and most important of all, her political organization. "The constitution of the Third Republic maintains and advances upon these constitutional achievements."

Its brevity.

The Constitution of 1875 is very brief, unlike the previous Constitutions of France. It consists of only twenty six articles and this brevity is not only contrary to the logic of a Frenchman, but it has often caused much ambiguity by subsequent filling in of the gaps. It shows little regard for orderly arrangement of material and even the language employed "is in spots decidedly below the French standard of grace and lucidity. More important, it makes no pretence to covering all of the matters which one expects to find treated in a Constitution. It goes into rather needless detail at some point, and at others omits fundamentals." It contains no Bill of Rights, nor is there any express guarantee of civil liberty. The Constitution is silent how the ministers shall be selected, or whether they shall be members of Parliament. Nor does it say to which House of the legislature the ministers shall be responsible. It does not contain any provision as to the method and the manner of the election of the members of the Chamber of Deputies and to their term of office. "There is no provision for annual budgets; and aside from a clause authorizing the Senate to be erected into a High Court, the Judiciary goes entirely unmentioned."

Its flexible rigidity.

It is a rigid constitution, but comparatively much less rigid than the Constitution of the United States. All Constitutional amendments have to undergo a new procedure clearly distinct from the ordinary law. Any proposal for an amendment to the Constitution must first be voted by the Chamber of Deputies and the Senate, each sitting separately and then by both the Chambers sitting in a joint session, called the National Assembly. Like the English Parliament it is not the same body which is empowered to make constitutional and ordinary laws. It is a separate machinery which is necessary and a separate procedure is adopted.

The Conventional shade.

Though a written Constitution, yet custom or usage too is a highly important element in the French constitution. It is by virtue of a custom that the Chamber of Deputies has been dissolved only once during the 64 years of the working of the French Constitution. In the same length of time only two Presidents of the Republic have been re-elected, and usage seems to have made a one term rule to be an established usage. The President's suspensive veto has never been exercised and his right to send messages to the legislature has fallen completely into disuse. "It is by custom only that statutes are never made retractive, that budgets are submitted annually, and the person of the President is very rarely made a subject of parliamentary debate."

Q. 2. Give the basic features of the Governmental system in France.

Ans. It is often said that France is a country with the forms of a Republic, the institutions of a monarchy, and the spirit of an empire. France is a Republic, sixty-four years of age, therefore a relatively young republic, but it is a republic with a past. The present republican institutions of France are much older than those envisaged in the Constitution of 1875. "They are derived in whole or in

part, from the various despotisms, empires, monarchies and republics that have had their day in France during the past five hundred years."

The Principle of Popular Sovereignty.

The second feature of the French Governmental system is that the principle of popular sovereignty has been well maintained. As a matter of fact France was the first country to unfurl the banner of popular sovereignty and in spite of the fact that after the Revolution of 1789 and limited government, the country had many a time slipped back into absolutism. The principle of popular sovereignty has never been allowed to go into abeyance. Nearly every country on the Continent of Europe faced dictatorship after the first World War, but the Republic of France remained a democracy. "Manhood suffrage, cabinet responsibility and parliamentary supremacy still give ample scope for the control of government by public opinion."

Unity and Controlisation of administration.

But France is a country with highly centralized institutions. Unity and centralization of administration are the two broad features of the governmental system in France. There is a reason behind it. We have already seen that the government is an organism which owes something to heredity and something to environment. For a proper understanding of the genius of a government we must not only know its present structure, but its history, its temperament, and the atmosphere in which it functions. France has always had a highly unified and centralized political system. Even today the French government continues to be highly centralized and concentrated at Paris. Ogg while explaining this feature says, "To be sure, as one political regime has succeeded another since 1789, she has to some extent oscillated between extreme centralization e. g., under Napoleon I, and a greater measure of autonomy for local areas and governments ; and conflict between the two principles runs throughout the history of the Third Republic, with, on the whole, a certain cautious tipping

of the scale in the direction of a wider geographical distribution of powers."

The theory of separation of power.

The theory of the Separation of Powers originated in France as a safeguard against autocratic government. The Constitution of 1879 embodied this fundamental principle, although it was ruthlessly defied by Napoleon. The authors of the Constitution of 1875 were fully alive to it. But by setting up a parliamentary form of government it has been reduced to a theory only. The legislator's control over administration in France is appreciably greater than in England. The control of the courts, on the other hand, over administration is much less than England. However, Ogg remarks, "and if the government be regarded as fundamentally one of union of powers, at all events, there is genuine and significant separation of functions."

The Supremacy of the Parliament.

The supremacy of the Parliament is an established fact, although it is little short of legal omnipotence of the English Parliament. In England the power of the Parliament over constitutional and ordinary law is legally true. In France constitutional law is the concern of the National Assembly but the National Assembly itself is nothing but a joint session of the Chamber of Deputies and the Senate. This National Assembly can make, amend or repeal any law concerning the Constitution. And like England but unlike the United States it is not subject to the judicial review. In neither France nor Great Britain is any act of Parliament challengeable judicially.

The absence of a declaration of rights.

The Constitution of 1875, does not contain any Rights of man. But there is a theory in France that the Declaration of Rights of 1789, having never been rescinded is still in effect. This view is supported by eminent authorities. There are others who hold a contrary opinion. It is now pretty well settled that one cannot go into court and

establish a right by reference to the historic declaration alone. As in Great Britain so in France there are certain monumental statutes which establish the private rights. The Law of June 30, 1881 established the freedom of public assembly, the Law of July 29, 1881, gave to the people the liberty of the Press and that of July 1, 1901 guaranteed the rights to form associations not having objectives contrary to law or subversive of public morality. "As in Great Britain also, however, the ultimate guarantee is the assurance of the Parliament, although legally capable of imposing any restrictions whatsoever, is an organ of popular opinion and can be depended upon to recognize and respect personal freedom as an indispensable prerequisite of democratic government.

Administrative courts.

Another peculiar feature in France and peculiar to the countries where Anglo Saxon races established themselves is the presence of Administrative Courts. In England every one, whether an official or a private citizen, is answerable before the same court of law and is subject to the same law in case he violates the law of the land. In France there are separate courts—Administrative Courts and a separate law. Administrative Law—for trying government servants if they violate the law while in the act of discharging their official duties.

Q: 3. What is the process of Constitutional Amendment in France.

Ans. France in 1875, was tired of changing governments by *Coups d'etat* or revolutions. The authors of the Constitution of 1875 were, accordingly, anxious to provide a quick, easy and non-violent way of effecting changes. So they made the process of constitutional amendment simple,—about as simple as it could be made without entirely abolishing the distinction between 'constitutional' and 'ordinary' laws. It is provided that "The Chambers shall have the right, by separate resolutions taken each by absolute majority of votes, either upon their own initiative

or upon the request of the President of the Republic, to declare a revision of the constitutional laws necessary. After each of the two Chambers shall have come to this decision, they shall meet together in National Assembly to proceed with the revision. The acts effecting revision of the constitutional laws, in whole or in part, shall be passed by an absolute majority of the members composing the National Assembly." That is to say :—

- (1) The President of the Republic or the Ministers acting in his name may propose an amendment of the Constitution ; or the proposal of such an amendment may come from one or both Houses of legislature ;
- (2) Then each House considers such an amendment individually and decides by a majority vote, whether in its judgment a revision of the constitutional law is necessary ;
- (3) If both the Houses—the Chamber of Deputies and the Senate—agree, then the members of both the Houses sit together at Versailles which is called the National Assembly. After such discussion as may be desired if by absolute majority the proposal passes, then it forthwith becomes part of the Constitution ;
- (4) By absolute majority is meant a majority of the total membership. It means half plus one of the legal number of members of both the Houses without deducting the vacancies caused by resignation, death or otherwise.

The process of constitutional amendment is very easy and quick as compared with the United States. But each Chamber enjoys a veto over the other in convoking a session of the National Assembly. It must, however, be noted that :—

- (a) The same men who make the ordinary laws are empowered to make constitutional change.

- (b) The proposal having been passed by both the Chambers individually, the National Assembly is organized in another way. Both the Chambers lose their individuality and the members of the Chamber of Deputies and the Senate become members on a common footing of a new and constituent body which meets at Versailles.
- (c) The amending process is simple and easy. But it is not so as it is in England.
- (d) The plan of Constitutional Amendment has the merit of making it somewhat difficult to set the amending machinery in motion, but is easy to obtain results after it is started.

Limitations on the Amending power. In 1884, the National Assembly passed a constitutional provision that the republican form of government shall never be made the subject of a constitutional amendment. Legally, it is pointed out that this limitation is bad and does not hold good, for the National Assembly, once set up, becomes a sovereign body "equally with the Assembly which made the Constitution in the first place, and as such cannot be regarded as bound by decisions of its predecessors. Any action of the Assembly would seem to be *ipso facto* valid and enforceable, even if directly contravening, "the provisions of the above limitation," or—so far as that goes—even if it displaced the entire existing Constitution by a new one."

Amendments thus far adopted.

The amending power has been used sparingly. Since 1875, in fact, the Constitutional Laws have been amended on three occasions only. The first was in 1879 when the seat of government was transferred from Versailles to Paris. In 1884 four amendments were sanctioned. Finally, in 1926, when "to bolster up confidence in the government's capacity to honour its financial obligations, a crisis 'national union,' ministry pressed upon reluctant Chambers an amendment giving complete financial autonomy to an

organization entrusted with amortizing the debt and earmarking specified revenues e.g., proceeds of the tobacco monopoly for debt payment."

Q. 4. "The French President in fact neither reigns nor governs." He is only a figurehead." Discuss.
(Allahabad 1944.)

Ans. The position of the French President as occupied by him under the III Republic has been variously described. Broglie said that the President is a chief, "invested with all the attributes of royalty, initiative, veto and execution of the laws; direction and administration in all its branches; appointment of all the employees of the Government, command of the forces on land and sea—a royal chief without the royal name and the royal permanence." Abbe, Lantagne, on the other hand, characterised French Presidency as, "an office with the sole virtue of impotence." Likewise Sir Henry Maine is of the opinion that, "there is no living functionary who occupies a more pitiable position than a French President," Mr. Theiers also holds that the constitutional king of England "reigns but does not govern, the President of the U. S. A. governs but he does not reign. It has been reserved for the President of the French Republic neither to reign nor to govern."

France is a country with a parliamentary form of government and in such a government the chief executive head is naturally a nominal ruler. He is of course endowed like the English King with all authority and power which is natural to his position. But in reality the whole authority is to be exercised with the advice of his responsible ministers. The constitution of France gives to the President immense executive, legislative and judicial powers and some of these powers are not even enjoyed by the English King but it is specifically provided in the constitution that, "each of the acts of the President must be counter-signed by a minister." The Ministers being responsible to the legislature are naturally to determine that when and how this power is to be exercised by the President. The actual position as occupied

by the President can best be appreciated by an analysis of his powers both in theory and practice simultaneously. This analysis may be done as follows :—

Executive powers.

In theory the President as the Chief executive is to promulgate the laws and watch their enforcement. He is to appoint and dismiss all civil and military officers. But this is all in theory. In practice his Cabinet collectively forms the chief executive and enforces all laws. All appointments are filled by the Ministers themselves. The President is indeed lucky, as Ogg remarks, "if he always knows what the Ministers intend to do." In theory the President receives the diplomatic agents of the foreign powers, appoints and instructs French ambassadors, ministers and envoys, negotiates and ratifies treaties and with the consent of both the chambers declares war. But in practice however, it is the Foreign office, presided over by a responsible minister that makes all the ambassadorial appointments, prepares their instructions, negotiates the treaties, formulates foreign policies and carries them out. In spite of all this it should not be ignored that in the sphere of foreign politics, the President of France, like the English King wields and may wield considerable influence because he enjoys a greater lease of life in office and is consequently more permanent than the quickly coming and going ministers. It is also to be noted here that it is the personality of the President which to a very large extent determines the nature of this influence. President Grevy for instance took a delicate negotiation with Germany out of the hands of his Foreign Ministers and conducted it himself. Poincaré who was President from 1913 to 1920 took a very active part in determining the foreign policy of his country during the first Great World War. In theory again the President is the Commander-in-chief of all the French forces on land and sea, both during war and peace. Actually, however, the command rests with the generals and admirals acting under the ministers of war and Marine subject to the supreme directions of the Cabinet.

Legislative powers.

Theoretically speaking the President summons and dissolves the Legislature. In practice, however, the French Constitution itself leaves very little option to the President in the sphere. It is constitutional provision that the chambers shall meet every year in January, irrespective of President having summoned a meeting or not. In theory again the Constitution provides that the President may prorogue a parliamentary session. Here again the constitution restricts powers of the President by providing that Legislature can prorogue only after its session has lasted for five months. The Constitution also provides that the President cannot adjourn the Legislature more than twice during the regular annual session for a period longer than one month's time.

According to the letter of the Constitution the president has the power to initiate legislation but according to the rules of practice of a parliamentary form of government the ministers initiate and pilot all legislation. Even President's messages, if they are at all sent have to be the handiwork of the ministers.

All bills after having been duly passed in the Chambers must have the assent of the President to become Acts. All Acts are promulgated in the name of the President. If the President so desires, he may not give assent to a measure and send it back to the chambers within a period of 30 days for reconsideration. If, however, the chambers repass it, it has to be promulgated. In France thus the President enjoys only a suspensive veto which too has now fallen into disuse.

The Constitution also provides that the President may dissolve the chamber of Deputies with the consent of the Senate. Dissolution of the lower Chamber by the executive head on the advice of the Ministers is a familiar feature of parliamentary government. It is alone in France that the President can dissolve the Chamber of Deputies with the Consent of the Senate. This really strengthens the

position of the President who also enjoys the nominal power to issue ordinances.

Judicial Powers.

Like the English King the French President also is the fountain-head of justice. He has full power of pardon and reprieve in all cases involving offences against the national laws.

An estimate of his position.

From the aforesaid discussion it is obvious that it is too much to agree with the writers who call the French President a mere cipher with neither any power nor any influence. It is true that his term of office is only seven years and after the lapse of these years he becomes an ordinary citizen. It is also true that the Constitutional provision, "every act of the President must be countersigned by a minister" does not leave him with the powers which the President of the U. S. A. enjoys. All this, however, does not mean that the French President does not exercise any influence in the determination of the national policy. In the following respects his influence and discretion may even be more than that of the English King.

In the first place the English king has no choice in the selection of the Prime Minister. He has to summon the leader of the majority party, in the legislature. But in France there is no distinct single party to form a ministry due to the multiplicity of parties there. Ministry in France in fact is always the result of compromise. Here thus the choice and discretion of the President to summon a man to form the Ministry who in his opinion will be able to command a majority, really counts.

In the second place the French President unlike the English King has had an active role to play in the actual politics and administration before he reached this high position. Indeed all Presidents have served in some capacity repeatedly—either as ministers or as speakers in one or

both the Chambers. This again strengthens the influence of the President in the actual politics of the day.

In the third place the French President is also in frequent and regular touch with his ministers. He sits with his Ministers and presides over their Meetings. The English King does not do so. The French President gives his opinion although he does not vote in the meetings of the Council of Ministers which discusses and adopts a course of action with regard to matters concerning foreign policy, military defence, and large administrative issues.

Thus the position of the President in France is at least like that of a constitutional king for seven years. He may not command but he can certainly advise. Whether his advice is accepted or not this entirely depends upon the personality of the President. Middleton rightly opines that "while the President's intervention in affairs is normally limited to the giving of advice, that advice counts from a man who in most cases is destined to survive the Cabinet, he is addressing. His knowledge of the work of the previous Governments and his acquaintance with the points of all important questions give weight to every thing he says." Naturally, therefore the position of the French President is neither so weak as Sir Henry Maine points, out nor so important as AGBe Lantaigne describes.

Q. 5. How is the Ministry formed in France?

(Calcutta 1936, Agra 1938).

Ans. The process of forming a ministry in France is similar to that in England. It is more a matter of usage, because the Constitution is absolutely silent on the point. It simply provides that "the ministers shall be collectively responsible to the Chambers for the general policy of the Government, and individually for their personal acts." The responsibility of the Government to the Chambers entitles the President of the Republic to call upon a person, whom he thinks can command the confidence of the majority in the Chambers. But it must here be noted that the person so selected may belong either to the Senate or

to the Chamber or Deputies. It is not necessary in France, as it is now in England, that the Prime Minister must necessarily belong to the Lower Chamber. Moreover, in England, due to the dual party system there is no choice for the King but to summon the leader of the majority party to form the ministry. In France, the President enjoys a wide discretion, because the multiple party system, as it exists there, does not ensure a single majority party. It is always a coalition government and the task is somewhat difficult to select a single outstanding leader from the various party groups, and hence the President generally consults the Presidents of the Senate and the Chamber of Deputies.

Having made the choice of the Prime Minister it is left to the latter to name his colleagues. But the Prime Minister has also an arduous task before him. He selects such party leaders whose combination can bring a working majority. After his selection, the ministers are appointed by the President's decree which is ratified by a formal resolution of confidence in the Chamber. In France, there is a functional separation of two branches of ministry, the Council of Ministers and the Cabinet of Ministers though the membership to both is the same.

The Council of Ministers has a legal recognition and is that body of ministers over the meetings of which the President of the Republic presides and is concerned with administrative details. In case of resignation, illness or death of the President of France, the Council of Ministers exercises all the functions of the President till the election of the new incumbent. The Cabinet of Ministers, on the other hand, is not recognized by law, and is the child of convention like the English Cabinet. It is the Prime Minister who presides over the meetings of this body. It is chiefly concerned with the formulation of broad policies of government and with the current question of internal politics. Since the ministers are collectively responsible for the administration, and, therefore everything which really concerns administration is discussed and decided in the Cabinet meetings.

French Cabinet is a balancing wheel of power. The real executive in France is the Cabinet. France enjoys a parliamentary type of government. According to the principles of classical political theory, in a parliamentary form of government a balancing wheel is needed to join the formal powers of the executive in the real dictates of the popular assembly. This work is the work of the French Cabinet. On one side is the Parliament and on the other the President who is neither accountable to Parliament nor can be removed by it. The Government proper that is to say, the general management of public affairs must be the result of a collaboration between these two organs. The instrument for this collaboration, the connecting link of the French Parliamentary system is the Cabinet. "This collaboration," remarks Joseph Barthelemy, "is not the offspring of a theorist's brain, but is inherent in the very nature of things, the chief of the State appoints the ministers, Parliament, may overthrow them."

Q. 6. Account for the instability of the French Cabinet.

Ans. It is an important question for a student of world constitutions to ask, "Is the French Cabinet the steering wheel of the ship of the State as the English Cabinet is, which governs even the Legislature? Or is it a weak executive organ?" In France the responsibility of the cabinet to the Parliament is complete. It only enjoys a subordinate status before the people's representatives seating in the Legislature. It is more so because the president does not use the power of dissolution that rests in him on behalf of Cabinet, struggling for its existence. The Ministers in French Cabinet are "the puppet toys whose life string is with the chambers."

1. Cabinet -- its delicate position.

The Premier in France is supposed to be a connecting link between Legislature and the Civil Service; the real Executive of the land. The Cabinet is not to govern and manage but to control the civil and Military Officers who

in pride of their experience are stubborn enough not to yield to popular control. "In other words the Prime Minister and his cabinet stand alone between hammer and anvil. They have two deadly enemies, a Parliament and a bureaucracy to which a third enemy may be added at times, the President of the Republic."

2. The nature and character of French Deputies and their attitude towards the Government.

The French Deputies love power more than the ideal to serve their motherland. They love subordination. They are always eager to assert their superiority. People hopeful of office and the people never hoping for office both combine to break the Government. One for ambition, the other for jealousy. Keeping this point in view Buell points out, "although individualism has many admirable feature it generally becomes negative and destructive when associated with mediocrity." As ably pointed out by a modern critic, "to the average French Deputy the discipline is arbitrary, order is reactionary and authority means tyranny," with such representatives as its critics the Cabinet in France can hardly hope to survive.

3. The system of interpellations.

In France another cause of the weakness of the executive is the system of interpellations. The members who put the questions to the Ministers are inspired not with the idea of information but with the desire to bring down the Government. The interpellation is to follow as an introductory speech. In the introductory speech enough time is given to the member to play with the emotions of the members of the House, to carry a vote of no-confidence, which is a natural consequence of every interpellation in France. Not only this. The scope of the interpellation is also very wide. It extends to minor and minute details of which it is not easy to be aware in time. The consequence of this system of interpellation is naturally a quick break-down of the Cabinet.

4. Lack of discipline in party groups.

In France the party discipline does not exist nor there is any party whip. Moreover in France a change of party colours is possible. The consequence is that a French man who only loves to have a post never minds to leave his party, to sacrifice his principles and to forsake his loyalties. The result is that majority in France shifts too quickly. And as such the French Constitution becomes only a story of the starts and stops, the rise and falls of the Cabinets.

5. The Composition of the Cabinet.

In France multiple party system exists with the consequence that no single party can ever have a clear cut majority. Government have to be a combination and a compromise. Members belonging to various groups have to be taken in a Cabinet. They cherish different ideals. They believe in different principles. They want to follow different policies. The consequence is that the French Cabinet, becomes a mere conflict than a workable union, only resulting in disruption of the Cabinet itself.

6. The absence of dissolution in France.

In England the Cabinet can dissolve the House of Commons if it feels that the Cabinet, not the House of Commons represents the voice of the nation. The result is that the members of the Houses of Commons are afraid of losing their seats, if they invite unnecessary tussles with the Government in power. Moreover, elections are always an expensive game. It is also a gamble full of chance and risk. Naturally therefore, a member once elected does not want to risk his position and incur fresh expenses, till the water is not above the head.

But in France the Cabinet does not enjoy this right of dissolution. This right has been given to the President. But he never likes to use it on behalf of the French Cabinet. The consequence is that the chamber of Deputies always plays with the life of the executive in France with no loss to itself.

7. The concept of ministerial responsibility in France.

In France Ministers are responsible collectively and individually. The decisions and proceedings of a Cabinet take place behind the camera (hidden). Naturally therefore, it is very difficult to fix responsibility and find out when it is collective.

At times the responsibility of one becomes the responsibility of the many. At others the responsibility of the many is thrust upon the shoulders of one, with the result that the Cabinet politics in France becomes a play of hide and seek, full of conflicts and leading to disruption of the Cabinet.

8. The Commissioned role.

Besides flattering the vanity of the Chamber of Deputies, the poor French Cabinet Minister has also to humour the commission which often comprises of the jealously ambitious ex-ministers who are always eager to play with the life of the Cabinet, partly due to their jealousy and partly owing to their ambition to occupy the lost office.

9. The President as the source of Cabinet instability.

It is true that the President cannot do anything without the assistance of a minister. But it is conversely true that the ministers cannot proceed to do the most important acts of the Government without the President's signature. This has often resulted in the resignation of the Cabinet and in the coming to blows of the two. This can be illustrated from the time of Mac. Mohan, Jules Simon, Poincare, Clemenceau, and many others.

10. The Senate and the Premier's Instability.

The Senate has coordinate Jurisdiction not only in the legislative sphere, except for the Money Bills, but also in controlling the executive. Thus one more enemy is added to the French Cabinet. The French Cabinet finds itself really pitifully weak when the senate and the

Chamber of Deputies happen to be of different shades of opinions and party colours.

All these factors have combined to weaken the French executive in a pitiful manner. It is not an exaggeration that the French Premier when he sleeps is not sure to awake as a Premier the next morning.

Q. 7. "The Senate, according to the French Constitution, is designed to be a deliberating, moderating, stabilizing influence. Its function is to impose at least a temporary check upon the exuberance of the Deputies who are younger, more numerous, and reflect a more direct expression of universal suffrage."

Ans. The National Assembly of 1875 was at odds on the issue of bicameralism and in France. After hot contest of opinions the anti-republican party had its way. It was resolved to have a second chamber which should possess dignity and strength and which might be in a position to prove a break on the radical and hasty decisions of the other chamber. It was accordingly resolved that the Senate should consist of 75 members appointed by the National Assembly for life and two to give members chosen for nine years by electoral colleges in the several departments (administrative divisions) of the Republic. The life membership was provided for to infuse a strong conservative element in the Senate. But in 1884 the life tenure was abolished because of adverse public opinion against such a provision. The last surviving life member died in 1918. From that time onwards all Senators are elected indirectly by the departmental colleges for a period of a year. One-third of these retire every year. Both these provisions account for its continuity and sobriety.

A Senator must be 40 years of age and in possession of full political and civil rights as a French citizen. This was intended to infuse conservatism in the second chamber in order to afford a moderating influence on the radicalism of the Lower Chamber, As the conditions stand to-day

the Senators are recruited from people who have by virtue of their eminence, education and distinction in various walks of life gained the approbation and esteem admittedly superior to that of the Chamber. The Chamber of Deputies, as a matter of fact has proved to be a stepping stone to the Senate. Every Deputy aspires to be a senator, because of the greater prestige attached to the Upper House. What the Senate gains the Chamber loses, "as able and maturer Deputies migrate, their places are of necessity taken by younger, less experienced and often less capable men." Amongst the Senators are thus to be found a very impressive number of ex-ministers, including ex-Premiers—men who know the problems and difficulties of the Government at first hand. Being smaller in size and commanding a talented personnel the Senate can be more deliberative and critical. It examines proposals in a better way than the Lower House.

Powers and functions.

In the legislative sphere the Senate generally enjoys co-equal powers with the Chamber of Deputies with the difference that the Money Bills must originate in the Lower House. The authors of the constitution, more particularly the conservative ones, intended to make it the more powerful of the two chambers. They have succeeded in doing so as:—

(a) The Ministry in France is responsible to the Chamber of Deputies as well as to the Senate. There had been four occasions when the Ministries were defeated by the hostile vote of the senate and obliged to quit office.

(b) The constitution empowered the President of the Republic to dissolve the Chamber of Deputies with the consent of the Senate. There had been only once this contingency and this power is now more or less obsolete. But nevertheless it exists on paper and can be used any day.

(c) The Senate enjoys co-equal powers with respect to legislation, except for the provision that the Money

Bills must originate in the Lower House. This further gives strength and dignity to it.

(d) The Senate serves, according to the constitution as a Court of Impeachment, for the trial of the President of the republic, or the ministers, or to take cognizance of assaults on the security of the state.

It has to be pointed out, however that the intentions of those who planned the powers of the Senate have not been fulfilled. The Senate could become neither so conservative as it was intended to be nor so powerful as it was desired to be. It proved less reactionary from the beginning though it has always been composed of men advanced in age, conservative in outlook and representative of the vested interests. Dr. Finer even asserts that the Senate in France has even been more liberal than the Chamber of Deputies. It is thus obvious that although the Senate has been a vigorous capable and useful legislative body but its powers and influence can in no way be called equal to that of the Chamber of Deputies. It is true, however, that a good deal of important legislation originates from it. It also exercises its function of revision with much deliberation and independence. It often amends, delays and defeats the measures to which the Chamber of Deputies and the ministers are agreed. It has also driven out ministers from office. Yet the Senate in France has not flouted the authority of the Chamber of Deputies for the obvious reason that as an indirectly elected body its claim cannot be superior to that of the other chamber. The Senate also has not persisted in its right to amend the legislative measures which emanate in the other house. It offers amendments, when found necessary. If the Chamber of Deputies agrees to these amendments well and good; if it does not the Senate usually would not persist. It has to be noted here that the constitution is absolutely silent on the point whether or not the Senate may amend the Money Bills or reject them.

A concluding review or senate as an ideal Second Chamber.

The real purpose of an ideal Second Chamber is to serve as a break, but not too tight a break on the process of legislation. Again a Second Chamber should be a calming medium to the radicalism of the public opinion as formulated and expressed in the Lower House, generally known as the Popular Chamber. If we judge the Senate on these standards "the French Senate makes a good showing." It has really been, "a stabilising factor in a country where political (executive) instability has become proverbial. It has provided the Third Republic with a good balance wheel" "The function of the Senate is to resist," says Bathelmey, and "in its own way it fulfils this function." But it seldom carries this resistance to open rupture. From this it should not be concluded however that French Senate has been reduced to impotence. It successfully and creditably scrutinizes, revises and delays legislation when necessary. Its working has shown that it is not only powerful but able as well. It is really not a secondary chamber but an ideal Second Chamber.

Q. 8. Describe the organization and functions of the Chamber of Deputies.

Ans. The Chamber of Deputies like other Lower Houses under parliamentary system is the centre of gravity in France. But in the Constitutional Law of 1875 there is no other provision about the Chamber except that the members shall be elected by universal suffrage. However, the National Assembly adopted Organic Law, dated November 30, 1875, in which the method of electing deputies was definitely prescribed. The provision of this Organic Law have been altered by statutes on more than half a dozen occasions since 1875.

As it stands today the Chamber of Deputies numbers 618 members—183 more than the house of Representatives of the United States and, curiously enough, almost exactly the same as the British House of Commons. The members are elected for a term of four years. The Constitution

provides for dissolution of the Chamber by the President of the Republic with the assent of the Senate. Actually there had been only one dissolution in 1877, but now it has become obsolete and every newly elected Chamber can be assured of full four years tenure. Deputies are required to be citizens of France, of 25 years of age and to have complied with the existing law relating to military. A candidate for membership to the Chamber must not belong to a family which has reigned in France. There are also many public offices which are incompatible with membership in the Chamber e. g. that of prefect.

The Chamber of Deputies meets each year on a date fixed by the Constitution. Its session is not summoned at the discretion of the ministry as is the practice in England. Two sessions a year are held, one beginning in January and lasting till July; the other beginning in November and continuing till January. Except for an interval of three months the Chamber is continually in session. The Constitution prescribes that both the Chamber of Deputies and the senate must remain in session for at least five months every year, even if there is no business for them to do. The President of the Republic may adjourn both Chambers for a period not exceeding one month, subject to the restriction that he must not do this more than twice during the same session. When the two Chambers have been in session for five months he may also prorogue them.

Functions common with the Senate.

As for the legislative powers, the two Chambers are co-equal, though financial proposals must originate in the Chamber of Deputies.

The Chamber of Deputies and the Senate are separately as well as jointly concerned in altering the Constitutional Law. When they meet together and constitute the National Assembly, both are on a footing of equality.

Both the Houses also unite to form the electoral college for electing the President of the Republic.

Each Chamber elects a Committee for a year to direct its work ; this Committee consists of a President, four Vice-Presidents, etc. Its business is to control the staff and keep order and security in the building.

The Powers of the Chamber.

Legislative Functions. The functions of the Chamber of Deputies are identical to the British House of Commons. It passes laws subject to the Senate's power of amendment and rejection and subject to the suspensive veto of the President of the Republic. Most bills of major importance make their first appearance in the Chamber of Deputies. When the legislative powers of both the Houses are co-equal, what is to happen when a bill passes the two Houses in somewhat different form ? "The answer, in a word, is that if the bill is one in which the government is interested, the minister chiefly concerned, passing back and forth between the Chambers, seeks to win out the difficulty by getting a surrender here and a concession there, and even upon occasions, by threatening to resign unless one or both Houses recede from positions that they have taken ; while if the measure is sponsored only by a private member or group, the Chambers may, if so disposed, seek agreement through the medium of Conference Committees analogous to the Conference Committees employed for a similar purpose in the American Congress."

Financial Powers. The Chamber of Deputies controls all financial subject, again, to the Senate's power of amendment and rejection. Here it is to be noted that the financial powers of both the Houses are co-equal, except that Money Bills must first be introduced in and passed by the Chamber of Deputies. For a long time there was a controversy as to whether the Senate could with propriety amend a Money Bill. The matter has now been decided and it is agreed that the Upper Chamber may propose amendments, but the Senate will give way if the Chamber of Deputies refuses to accept them.

Budgetary procedures the world over are becoming similar and in this respect France has borrowed in part from Great Britain.

Executive Powers. The Chamber controls the executive and it is the majority in the Chamber which keeps the government in power. The ministerial responsibility is, of course, of both the Houses. Through the process of interpellations the House ventilates its grievances. It has also the power to impeach the President of the Republic and the Ministers.

A concluding review. Compared with the House of Commons it may appear theoretically that the Chamber of Deputies is less powerful, because the Constitution gives co-equal powers to the Senate. In practice, however, the Senate in France acts as a Second Chamber in the real sense of the term and does not persist if the Deputies insist on their bill being carried out. In brief, the bill of the Chamber of Deputies is duly respected by the Senate. It is also powerful, because the Chamber is able to control the Cabinet more effectively than the House of Commons is able to control its Cabinet.

Q. 9. Describe the working of the French Commissions. How far is it advisable to introduce such a system in England.

Ans. The French Commission system which finds such a conspicuous place in the Parliamentary procedure of France, is not a new one. By a long established procedure every bill after having been introduced and read by the President of the House was formally referred to a Committee. Originally such a committee was *ad hoc*, elected to consider a particular bill, and to report to the Chamber. About the beginning of this century, however the Chamber adopted the practice of electing permanent Committees, each of which was competent to deal with a specified group of subjects of legislation.

By 1909 there were nine such Committees. Simple logical extension carried the system to the point at which there were practically as many Committees as there were ministerial departments. In 1920 the Regulation fixed their number at 20 and that of the Senate at 11 (in 1921). Each Committee consists of 44 members, the various groups of the Chamber being represented in proportion to their numerical strength. The Senate has faithfully copied this arrangement.

The project or a proposition is normally referred forthwith by the President of the Chamber to the appropriate Committee. A given measure may, of course, be of interest to two or more Committees. The solution in such a contingency, has been found in an interesting plan. One of the Committees may be asked to assume the primary jurisdiction while the other Committee or Committees may be designate non-voting representatives to attend the meetings of the Committee with primary jurisdiction and later give the Chamber the benefit of their own observations.

It is in the Committee that the bill receives the most detailed and informed consideration. It would be hardly too much to say that half the real work of the Chamber and the Senate is done by the Commissions. Contrary to practice in both Great Britain and the United States each Committee elects its own Chairman and other officers. The Chairman carries a good deal of prestige and honour and the selection is coveted. The meetings of the Committee are rarely less frequent than once a week, and often almost daily. Contrary to the American usage, the sessions of the Committee are always closed to the public. The Committee is at liberty to seek information from any source with respect to any point. It may require the attendance of witnesses including the ministers. To be sure, experts from outside may be invited in; and the author of a private member's bill may attend in a consultative capacity, provided he is willing to retire whenever the Committee votes.

Every commission selects its own Rapporteur or Reporter. In England, a public bill, after the Committee stage as well as before, is in direct charge of a minister, who explains it, defends it and pilots it, in the Parliament and the Committee. In the United States of America, practically all bills are reported and managed by the chairman of the respective Committee. In France when a Bill (whether project or proposition) is taken up by a Committee, the first step is to designate one of its members as reporter for that measure. He minutely studies the whole question concerning the bill and presents it to Committee. After the bill has been elaborately thrashed out by the Commission the reporter prepares a report. It is an elaborate and well conceived document. It contains the original measure, the nature of the oral and documentary evidence produced before the Commission, expert opinion, history of the bill and the measure in its amended form and the report as written by the reporter. The report must be submitted within a maximum period of four months to the Chamber and six months to the Senate.

When the report is submitted to the Chamber it becomes the concern of the reporter to shoulder the main responsibility for securing action by the Chamber. The reporter goes to the Chamber to bear the brunt of the attack and to marshal and direct the defence. This eclipses the position and power of the minister.

It is true that the Commissions were established purely to simplify and ease the legislative procedure. But from being simple organs of criticism and suggestions these have generally become the engines of control of the executive. They even go so far as to dominate the administrative departments of the government. The vigour and independence of the great committees, in the two Houses are indeed principal reasons-along with the defects of the multiple party system-for the weak parliamentary position occupied by the Cabinet in France. Even in legislation they recognize no obligation to ditto the proposals of the government and they bring many a government bill

to eventual defeat. Commissions keep the executive departments under strict scrutiny. The Commissions may be considered as a fourth wheel in the French Constitution. The powers and the control of the Financial Committee are unlimited. The Foreign Affairs Committee, the Army Committee, the Naval Committee expect and receive frequent statements on current policy from the ministers concerned. They also control the policy quite as much as do the responsible ministers and the ministers dare not go contrary to the wishes of the appropriate Committee. One of the strongest of the French ministers, Poincare, repeatedly criticized the power of the Committees, which he considered a serious obstacle to the functioning of government. More recently Premier Blum expressed similar views.

It is said by the critics of the Commission system that it has positively displaced the axis of the system of government. This in the opinion of others is an exaggerated view, because the ministry can always overrule the Commission if it determines to do so and so long as it can command a majority. The control exercised by the Commission is advantageous to the extent that there is continuity of policy, keeping in view the short and precarious life of the ministries. In the legislative field it has also many merits. In the first place it affords each party-group an opportunity to place its members on Committee in which they are interested. The Commissions are also imbued with a sense of responsibility and they have become bodies in which much of the real law making work is done. The report of the Committee is a comprehensive document which also contains expert opinion and in this sense it is better than the Report of the Committees in England. Had it not been for the Committee's initiative which confronts the governmental initiative, the Commission system as it exists in France, is a feasible plan for adoption in England. Purge it of its defects and it becomes a workable proposition.

Q. 10. Dicey is responsible for making the statement that there is no liberty in France, because there is no

Rule of Law. Define Administrative Law and compare it with the Rule of Law.

(Allahabad 1944, 41; Agra 1947, 43, 40, 37; Punjab 1942, 37, 35)

Ans. Administrative law is that body of rules, devised by the French executive, for regulating the relations of the State towards its citizens. It has been defined by Dicey as that "body of rules which regulate the relations of the administration or the administrative authority towards private citizens." As it is possible that a dispute may arise between one individual and another, similarly there may be a cause of dispute between the officers of the government and the people. The officers may either exceed the authority vested in them by law or their actions may either be arbitrary or unjustifiable. In such a case it is conceded that the individual of the State may have the right for the redress of his grievances. The rules which are applicable in this connection are known as the Administrative Law. In brief, it is that portion of the French Law which determines:—

1. The position and liabilities of all State official.
2. The civil rights and liabilities of private individuals in their dealings with officials as representatives of the State and ;
3. The procedure by which these rights and duties are enforced.

The French jurisprudence is largely based upon the Roman Law. It is, accordingly, held that those who serve the State in their official capacity are not amenable to the ordinary laws of the land and as such they could not be sued in the ordinary courts of the country. If an individual finds that he has been wronged by a particular official of the State, or the action of that officer is the result of bad judgment, or, it is arbitrary in nature, he is entitled to seek redress, but he must seek it from special tribunals which are maintained for this purpose and which apply

Administrative Law as distinguished from the ordinary law of the land.

In England and the United States of America the legal system is based upon the Anglo-Saxon law. It is an important axiom of the Anglo-Saxon law that all officials of the State, save the very highest, are subject to the ordinary laws of the land and are amenable to the jurisdiction of the ordinary courts. If the ordinary official of the State do any wrong to an individual they can be sued in the ordinary courts and tried by them in an ordinary manner. There do not exist in both these countries like France, either the special tribunals or the special law. In other words the Englishmen and Americans make no clear separation between public law and private law—the one applying to officials and the other to ordinary citizens, because as the maxim goes, all are equal before law. This has been characterized by Dicey as the Rule of Law and he maintains that there is liberty in England because of the Rule of Law.

Dicey had been vehement in his condemnation of the administrative law. It is pointed out that justice cannot be expected in administrative courts, because the officials who constitute the court would naturally be favourably inclined towards their brother officials. Moreover, justice cannot be secured if governmental policy demands a certain decision. It is the impartiality of the courts, it is said, which ensures the liberty of the people and preservation of their rights. Impartiality and independence cannot be expected from the administrative courts. Individual rights may be sacrificed when the administration is both the offender and the judge of the offence. Further, administrative law is based upon customs and precedents rather than on statutes. It is therefore, indefinite and vague. Lastly, by placing the officials of the State beyond the jurisdiction of the ordinary law and ordinary courts of the country, we not only destroy the universality of law but also make it undemocratic.

But in the light of the French experience it is not true to say that under administrative law there is no liberty. On the contrary Frenchmen consider it the cornerstone of their liberty. There is also no justification for suspecting the administrative courts for partiality in favour of the officials. The Council of State as the highest administrative tribunal has established admirable traditions of impartiality. In the decision of the cases between the State and the citizens expert and technical matters are often to be decided. If the case is to be tried in the ordinary courts, as it is in England and the United States, it is beyond the competence of a judge to understand properly all the technicalities and give decision as an expert. As a lay man he is susceptible to wrong judgment. On the other hand an administrative court will consist of the experts and, as such, there is greater possibility of a right judgment and expert decision. Again a private citizen in France often gets better and real redress from the administrative courts than an Englishman. In France if the officer is found guilty it is the State which pays all the damages, but in England it is the official himself who is made liable and it is impossible to obtain actual redress. Goodnow has remarked that the administrative courts have shown themselves more favourable to private rights than the ordinary courts. Further litigation in administrative courts is also cheap and executed rapidly. The procedure is also simple

Administrative law is not codified. It is a case law made up almost entirely of precedents. Foreign jurists have all admiration for it because it has been so carefully constructed, step by step, according to the requirements of the time. It is more flexible and can be adjusted according to the requirements of the time. Moreover the law built up in this way covers a wide range. It can now be said without possibility of contradiction that there is no other country in which the rights of private individuals are so well protected against the arbitrariness, the abuses, and the illegal conduct of the administrative authorities, and where people are so sure of receiving reparation for injuries sustained on account of such conduct."

Q. 11. Give a broad outline of the organization of the Local Government in France. (*Punjab 1937*)

Ans. The most important feature of the Local Government in France is its centralization. From the communes which are the real units of the Local Government, right upto the Ministry of Interior, the administration is linked up with one chain. According to Munro "the Minister of the Interior at Paris just presses a button—the prefects, sub-prefects and the mayors do the rest. All the wires run to Paris." This centralisation and, therefore, its consequent uniformity is a sharp contrast to the decentralized character of Local Government in England. The principle accepted in England is that the local area has the inherent right to conduct its affairs, in its own way and according to its requirements without the interference of the central authority unless supervision is clearly needed to serve the general interests. The Local bodies in France are neither autonomous "provinces" like those of England, nor political self-governing states like those of the United States. These are, on the other hand convenient administrative divisions and sub-divisions.

The main Local Areas of France are divided into (i) Departments (ii) Arrondissements and (iii) the Communes.

Departments.

The whole country is divided into ninety Departments. At the head of each department is the Prefect appointed and removable by the President of the Republic on the recommendation of the Minister of the Interior. He occupies a dual position. As an agent of the Central Government he is incharge of the general administration and is responsible for enforcing the national law within his Department on such matters as education, sanitation, agriculture, high-way, the public and police. He appoints a host of officials. In the same capacity he controls the Sub-prefects and the mayors and has the power to annul the orders of the Municipal Councils. In carrying out his duties he receives detailed instructions from the Central

Government. In the second place the Prefect is also the executive head of the Department and carries out the resolutions of the General Council. But in his dealings with the council he is master rather than the servant, because his appointment and the tenure of office does not depend on the council.

Each Department has a General Council which consists of representatives elected for six years, one from each Canton, within the Department. The Council meets twice a year. It has its own elected President. The powers of the Council are only confined to local affairs, like poor relief, buildings, bridges, traffic etc. The effective powers of the Council are limited in four ways :—

1. The Prefect, who is its executive authority, is neither appointed by the Council nor is responsible to it.
2. The Council cannot disregard the national laws.
3. Its decision may be over-ruled by the Central Government.
4. All initiative rests with the Prefect. Lowell has beautifully summed up the whole position in the following words :—

“ In general it may be said that in matters falling within its province the General Council cannot do every thing it wants, but can prevent almost anything it does not want.”

Arrondissements.

The Departments are divided into Arrondissements. Each Arrondissement has a sub-prefect who is appointed and remains in office like the Prefect. The Sub-Prefect is a mere agent of the Prefect and has no independent power. There is an elective Council in the Arrondissement but it cannot vote money. It has merely an administrative jurisdiction of the Central Government “ without corporate personality, with no property, revenues or expenses of its own.”

Communes.

The Arrondissements are sub-divided into Communes ; each of which has a Municipal Council, with a membership varying from 10 to 36 and the members are elected for six years. The Council holds four ordinary sessions every year. It regulates by its deliberations the affairs of the commune. Its resolutions are subject to three limitations, which are as follows :—

1. Certain proceedings of the Commune Council are subject to the approval of the Prefect.
2. Other proceedings of importance are subject to the approval of the Central Government.
3. Others, more important still to the approval of the Chambers.

The executive head of the commune is the Mayor, who is elected by the Municipal Council for a term of four years, but cannot be removed from office by the Council. The Mayor, like the Prefect, occupies a dual position. He acts as an agent of the Central Government in matters relating to Police, public health, finance etc. He is authorized to draw up and sign the deeds of marriages, births and deaths. He is also the executive head of the commune, and as such carries out the resolutions of the Municipal Council.

In carrying out his multifarious duties he is subject to the control and orders of the Prefect and the Minister of the Interior. He can be suspended from office for a month by the Prefect, or for three months by the Minister of Interior, but can be removed from office only by the President of the Republic.

A Critical Review.

Thus the essence of the French Local Government is that all authority is centralized in the central Government and the local units enjoy little or no autonomy in their respective spheres of activity. They have to carry on

administration with funds supplied by the Central Government and in strict compliance with the directions they receive from the latter. Such a system cannot create interest in local affairs.

The merit of the system is, that it gives uniformity to the local administration, and enables the central Government to control the machinery of the State efficiently in all directions. Moreover, it is argued that the execution of the national laws depends upon the local authorities and it is therefore, necessary that they must be subject to central control.

But the demerits of such a system are also too glaring:—

1. Uniformity in the Local Affairs is detrimental to the local interests. Each Local Area has its own peculiar problems and uniform rules cannot satisfy all those problems.

2. It is the people of the Local Areas who are the best judges of their needs rather than the Central Government which is not susceptible to those requirements.

3. Uniformity and Central Control are accompanied by economy. But it has been rightly said that good Government is no substitute for self-government.

4. The huge staff of subordinate officials, called functionaries, entails unjustifiable burden on tax-payer.

5. These officials also influence the voters in the rural areas during the parliamentary elections, which is highly objectionable.

6. The National Parliament is over-burdened with task which would have been conveniently and advantageously entrusted to Local Units.

Q. 12. Describe the main changes introduced in the governmental system of France by the Constitution of the Fourth Republic.
(Agra University 1951).

Ans. At the outset it has to be recognized that the Fourth Republic Constitution of France does not admit of any profound changes. The changes introduced resemble more a change of colour in the clothes of the body politic rather than the clothes itself. This is, however, to the advantage of the French people. In this connection G. Wright states that the new Regime, "fits easily into the groove of the French Governmental tradition; for the average citizen little effort at mental adjustment has been required."

The changes introduced in the French Constitution under the Fourth Republic may be briefly summarized under the following heads.

(1) Changes in the characteristic features.

One notices the following changes in its overall characteristics :—

- (a) The new French Constitution provides a constitution within a Constitution. It now lays down a constitutional structure also concerning the overseas territories of France. It thus provides a pattern of union for the French empire. Consequently it has become a little longer than the Constitution of the U. S. A. with all its amendments.
- (b) The new constitution introduces referendum in the amendment process. Thus the dogma of popular sovereignty is asserted in France with a refreshing boldness under the new Constitution.
- (c) The new constitution also provides a one paged chapter on the rights of man. Though brief, it is comprehensive. It does not admit of much alterations in what have been said about the rights and liberties of the citizens in the constitutions of 1789 and 1875. It reaffirms the "Rights and Freedom of Man and of the citizens in the constitution of 1789 and 1875. It reaffirms the "Rights and Freedom of Man and of the citizens as consecrated

by the Declaration of rights of 1789 and fundamental principles recognized by the laws of the Third Republic." Right of education both technical and professional, universal right to work and complete freedom of labourers to organize, to bargain collectively and even to strike have been recognized. The right to strike is particularly communistic in tendency. This provision, a unique feature in itself, displays the communistic bent of the mind of the makers of the French Constitution. Strangely enough on the other hand, however, personal property has been safeguarded. But the Constitution provides that any property acquiring the character of "a national public service or a monopoly," shall be taken over by the State. Thus the new constitution of France appears a half way house arrangement between capitalism and communism, though the swing to the latter is more vigorous and obvious. It has also to be noted that the most outspoken change in the French Constitution under the Fourth Republic appears to be the express recognition of the equality of women with men, "in all domains." In this respect the new constitution is more democratic than the previous ones.

- (d) The new constitution of France deliberately repudiates the principles of the separation of powers: "The system is," as pointed out by the Constitutional committee's reporter," a single monolithic structure, a compromise between a presidential system based upon separation of powers and a government by assembly based upon confusion of powers." As a consequence it is of course a system much closer to the British than to the American.
- (e) The new constitution of France also bears with it what may be termed the international impress. "Faithful to its traditions," says the constitution, "the French Republic abides by the rules of international law." It will not undertake wars of conquest. Nor it shall use its arms against the freedom of

any people. This will be on a reciprocal basis alone. France thus stands as the first important nation which has thought to boycott imperialism through its constitution.

2. Changes in names and institutions.

Besides, the new constitution also introduced certain changes in nomenclature. The Chamber of Deputies shall henceforth be known as National Assembly. The Senate will assume the title of the Council of the Republic.

Not only this. It also introduces a new institution known as the "Constitutional Committee" to judge the constitutionality of the National Assembly's legislation. This committee thus is supposed to be the guardian of the new constitution of France.

3. Changes in co-ordinate bi-cameralism.

Under the Fourth Republic, France only enjoys a shadow of Bi-cameral system. The French critic J. Laferriere has gone to the extent of asserting that the New Parliament is bi-cameral in form and appearance only and not in reality. Even if we do not agree with this view it remains a fact that "the National Assembly far transcends the former chamber of Deputies, while the Council of the Republic is but an extremely pale image of the old Senate." The Constitution bluntly lays down in Article 13 that, "The National Assembly alone shall vote the laws. It may not delegate this right." Thus under the present Constitution, "the ministry may propose and the Council of the Republic may suggest, but only the National Assembly can enact." The Council of the Republic only enjoys a suspensive veto through its membership of the Constitutional Committee. Under certain circumstances it can force a constitutional amendment to be submitted to a referendum. In legislation, it is simply as the French put it a "council for reflection."

4. Changes in the position of the President.

Like the Council of the Republic, the Constitution also leaves the President of the Republic weak and help-

less. Now the President neither controls the sessions of the Parliament nor does he initiate the constitutional amendments. The Constitution specifically lays down that "every Presidential act shall be countersigned by the President of the Council of Ministers." He is thus now a mere puppet in the hands of the ministers. Not only this. The Premier now is to appoint the civil and military officials instead of the President. The President has now only been charged to promulgate the laws enacted by the popular legislature and that too ordinarily within ten days and in emergency within five days. In this period he can well exercise his suspensive veto and send the Bill for recommendation to the Assembly. If the Assembly re-enacts, even in the same previous form, the President has no option but to promulgate it in all helplessness. The responsibility for the enforcement of laws now rests with the Premier and not with the President. Lastly under the new constitution the administrative law is thrown off over board. The President is not immune from National Punishment. He can be charged and tried for treason before a High Court elected by the Assembly at the opening of each Parliament for such purpose.

5. Changes in the position of Premier.

Theoretically the French Premier is still the nominee of the President of the Republic. The Assembly has no opportunity directly to elect him. But it can refuse to confirm so to speak, because the Premier-designate must lay before the body "the programme and policy of the Cabinet he intends to constitute," and he and his ministers can be formally appointed by the President only after the Assembly has given him an expression of confidence by roll call vote and absolute majority. In a real sense thus the Premier in France is more an elected official of the National Assembly than a nominee of the President of the French Republic.

Before the Fourth Republic Constitution the Premier in France was only a living convention. The Office was unknown to law. The new constitution has "Constitutionalized

the office. The Premier is now referred in the constitution as the President of the Republic. Speaking of his new status the reporter of the Constitutional Commission rightly asserted that he has become a Prime Minister in the English sense." "Actually he has become even more than that—a head of the Government, with powers at some points considerably transcending those of the British Ministerial chief." We may not agree with this opinion of Ogg and Zink keeping in view the democratic dictatorship of the British Prime Ministership on the score of his party strength. It remains a fact, however, that under the New Constitution the Premier exercises an enhanced measure of powers. To him have also been transferred the powers of the President of the Republic. He is now independently charged with :—

- (1) Proposing legislation to the chambers.
- (2) Independently appointing all civil and military officials except where, as in the case of judges, the power has been left nominally to the President of the Republic.
- (3) Directing armed forces and co-ordinating all measures for defence, although with the President of the Republic bearing the more or less title of Commander-in-Chief.
- (4) Seeing to the execution of all national laws, with as broad a mandate at this point as that of the President of the U. S. A.
- (5) Exercising the power to issue edicts prescribing rules and regulations supplementing the laws and enforcing their enforcement and finally
- (6) exercising numerous powers of a miscellaneous character—declaring a state of siege, removing mayors of communes dissolving communal councils and others etc.

Under the New Constitution the Premier has also been granted a restricted right to dissolve the House. Dissolu-

tion is not allowed within first 18 months. Later if two ministerial crisis ensure within 18 months the Premier can have the house dissolved formally through the President.

To sum up "under the new constitutional system the President of the Council of Ministers has become a very supreme sort of official with powers and functions comparable in many interesting ways to those of the Prime Minister of England and the President of the U.S.A.

Constitution of America

CONSTITUTION OF AMERICA.

Q. 1. What are the main features of the American Constitution ?
(Calcutta 1934., Agra 1946)

Ans. Its written Character.

The Constitution of the United States of America is the best type of a written instrument. Originally, it was the union of thirteen colonies which intended to federate. The entire structure of the Central Government, thus created, and that of the Government of the units was laid down in what is called the Declaration of Philadelphia in 1787. The necessity of a written Constitution in a Federation is an established fact. But the Fathers of the Constitution left much to be decided by the Acts of the Congress or legislation by the States. The Constitution created the Supreme Court but it was maintained that the organization of the Supreme Court was to be determined by the Congress. The number of the executive departments, their mode of organization and their functions are also determined by the Congressional legislation. The Constitution as it stands today consists of the Constitution of 1789, the amendments, various Acts of the Congress and judicial interpretation of the Constitution and the laws.

Its conventional shade.

Constitution of America is written, we do not mean thereby that customs and usages have no part to play in the Constitutional frame-work of the country. There are many customs, usages and precedents which supplement the American Constitution and to a certain extent materially change the basis of the Constitution. The most conspicuous example of a custom is that of the election of the President. The Constitution provides

that the President shall be indirectly elected, but this has now come to be a direct election by virtue of a usage. Similarly President Washington set a precedent that the President should not offer himself for election for more than two terms. This precedent was scrupulously followed till the time of President Roosevelt, when he offered himself for the third term of election. But this does not mean that an unwritten element dominates the written one. The American Constitution provides, indeed, a classical illustration of a written Constitution. The Constitution of 1789, supplemented by the twenty-one amendments provides the fundamental principles and the main structure of the governmental machinery of the Centre and the units, although there are many customs and judicial interpretations which reinforce the Constitutional Law of 1789.

Its rigidity.

The Constitution of America is a rigid one. The amendment of the Constitution necessitates adopting a special procedure and a separate machinery. It is unlike the method adopted in England. It also differs from the process of amendment as in the case of France. In France both the Chambers act separately and jointly for purposes of constitutional amendment. But the Constitution of America is extremely rigid and difficult to amend. During the last 150 years the United States has witnessed only 21 amendments.

Its federal character.

The Constitution of the United States is federal in character and is unlike that of England and France which are unitary. The authors of the Constitution were agreed on the point that in union there is strength, but while attaining this strength they also desired to preserve the individuality of the units and, therefore, they did not unite. They conceived, accordingly, of a plan which granted certain specified powers to the newly created Central Government and left the maximum autonomy to the units

who were determined for a union. Then powers given to the Central Government are national in character whereas the jurisdiction of the States which are 48 in number, now, is local.

Its Republican form.

So vital are the States to the perpetuity of the union that "the Constitution specially recognises federal responsibility for defending its integrity." The Constitution also guarantees to every State a republican form of government, protection against invasion, and, on application of the proper State authority, assistance against domestic insurrection. Beard says, "There is still meaning in the old aphorism: 'An indestructible union of indestructible States.'"

As the federal system requires two sets of governments, so it calls for a division of powers between them. There is a complete demarcation of powers between the Central Government and the units provided for in the Constitution. Under the Constitution specified and general functions like defence, conduct of foreign affairs, the regulation of commerce and international trade, currency and exchange etc., are given to the Federal Government. To the States are left the powers not delegated—residuary—to the Centre by the Constitution or prohibited by it to the States. Thus the powers of government are divided between two sets of authorities, and not concentrated in the hands of a single government. "By the due exercise of powers, thus divided, the Union and the States preserve their integrity, give strength to each other, act as checks upon too much centralization or too much localization, and facilitate the conduct of their reciprocal relations."

An embodiment of separation of powers.

If ever there is any country which puts into earnest practice the Montesquieu Theory of the Separation of powers, it is the United States of America. The authors of the American Constitution were agreed that "power

limited, controlled and diffused comes within the constitutional conception." The concentration of all powers, legislative, executive and judicial, in the hands of one person or group was characterised to be "the very definition of tyranny." The executive, legislative and judicial powers of the Central Government were, accordingly, distinctly defined among three separate departments. In the States, too, the same principle is applied.

A system of checks and balances.

In spite of this scrupulous adherence to the Theory of Separation of Powers, a close examination of the Constitution, however, shows that the men who drafted it were unable to maintain the purity of the doctrine when they came to details. Having distinctly separated and defined the powers of each department, it was apprehended that the concentration of powers in the respective departments might lead to the arbitrary exercise of authority. Accordingly, a system of checks and balances was introduced, by dividing the same power between other departments. Numerous illustrations of this system of checks and balances can be cited. The appointing power of the President is shared by the Senate. The treaty making power is divided between the President and the Senate. The President shares in the legislation through his veto power. Even the judiciary, which is the creation of the Constitution, is in many respects subject to the control of the Congress.

Popular Sovereignty.

A prime characteristic of the American system lies in the fact that it asserts the theory of popular sovereignty in a most emphatic manner. The right of the people to ordain, abolish and alter their own institutions of Government was asserted in the Declaration of Independence. The preamble of the Constitution runs: "We the people of the United States in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general

welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States." James Madison maintained in the *Federalist* that the American system is based on "that honourable determination which estimates every votary of freedom, to rest our political experiments on the capacity of mankind for self-government." Such declarations are an excellent example of popular sovereignty. "With the ultimate powers vested in a huge popular electorate, it follows that civilian supremacy over the military is taken for granted, is indeed pledged by the very forms and provisions of the Federal Constitution itself."

The Bill of Rights.

The Constitution of the United States embodies in clear and unequivocal terms the Rights of Man. "The people have reserved certain rights and privileges to themselves which cannot be modified, suspended or abridged by the authorities, local or national; certain rights which cannot be invaded by State Governments alone, others which are protected against violation by the Federal Government." All these rights are definitely enumerated in the State Constitutions and the Constitution of the United States. But this does not exhaust all the rights. Article IX of the Constitution declares that "enumeration of certain rights in the Constitution is not to be construed to deny or disparage others retained by the people." Such rights can neither be modified, nor suspended nor abrogated except by a constitutional amendment.

The Spoils system.

Another feature of the American Constitution is the Spoils system which is associated with the name of President Andrew Jackson. It came to be a practice in America that with the incoming of the new President all the officers in the Federal Government were re-filled with men of the President's choice without any consideration or regard to the intelligence, aptitude or capabilities of the persons appointed. This system is known as the Spoils System and under this system offices were given for

loyalty to party principles, service to party organization and monetary assistance rendered to the party. The result was that "experienced and worthy public officials were ousted on all sides to make room for political henchmen. The public services were thrown into demoralization every time a change of administration took place. The President was harassed almost beyond endurance by place seekers and their friends. Congressmen tended to become mere solicitors and dispensers of patronage. Administration fell to a generally low level, politics itself grew more mercenary and corrupt. "But the assassination of the President Garfield brought this vicious system to an end and the Congress passed the Pendleton Act in 1833, according to which 80 p. c. of the incumbents to different offices under the Federal Government were to be appointed by competitive examination. It must, however, be remembered that in spite of this statutory restriction there are still many offices which are filled by the new President and their numbers run into several hundreds. "Under President F. D. Roosevelt the percentage of civil servants under Civil Service Rules has gone down from 80 p. c. to 67.7 p.c. in 1939. Immediately before the last war started the employees under 'classified services' were 622,832. The chief obstacles in the way of bringing all employees under 'classified services' are the reluctance of Congressmen to lose patronage and the opposition of the party machine to the loss of a powerful instrument of political influence."

The Judicial Review.

In England and France there is no court of law which can hold legislation as ultra vires. But in the United States every act of the Congress is subject to the scrutiny of the Supreme Court. Federal Court as a matter of fact is the guardian of the Constitution. It is the Supreme Court which is empowered to interpret the Constitution and decide whether the Congress or the State Legislature are competent to pass a particular kind of legislation, if in the opinion of the majority of judges of the Supreme Court a particular Act is beyond the authority given to the

Congress or that it encroaches upon the domain of State legislatures or seeks to deny or abridge the civil liberties of the people.

Q. 2 Examine the characteristic features of the American constitution as a federation.

Ans. The American system of government is federal in character. It is a union of indestructible units. The Federal arrangement was arrived at in America by the process of integration. That is, the States combined to evolve a union with a common central authority to look after the common matters of national importance.

To judge the American constitution as a frame work of a federal Government we shall have to call first the three characteristic features of a Federation. These are as follows :—

- (i) The supremacy of the Constitution ;
- (ii) The distribution of powers ; and
- (iii) The Supremacy of the Judiciary.

Let us now see how these three characteristics of a federation have been worked out in the federal structure of America. This survey can be made as follows :—

(1) The Supremacy of the Constitution.

In America the constitution has been granted complete supremacy. Article 6, paragraph 2 of the constitution lays down that, "The constitution shall be the supreme law of the land, and judges in every state shall be bound thereby, anything, in the constitution or laws of any state not withstanding." This Article makes it perfectly clear where the constitution stands. It is supreme over all the organs of the American Government national, state and local. Its provisions so far as they go are binding on every one from the chief Executive of the Nation down to the humblest of the citizens. Laws made in the pursuance of this constitution and the treaties made under the authority

of the United States are also paramount, only because it is through them that the supreme constitutional power is exercised. Thus the supremacy of the constitution is fully secured in America. The Supreme Constitution is to see that the constitution remains supreme and nothing unconstitutional is either allowed to be legalised or enforced. The American Constitution is rigid as well as it can only be changed with a special machinery of amendment already provided in the constitution of U.S.A. Thus the first feature of a federal government—that is the supremacy of the constitution has—been tightly maintained in the Constitution of America.

(ii) The Distribution of powers.

In the scheme of American system of distribution of powers the following things are to be noted at the outset :—

(a) The American scheme is the grant of powers to the National Government. The residuary powers belong to the States. The Constitution enumerates specifically the powers granted to the National Government. It can exercise only these powers and no others. Thus the National Government in U.S.A. enjoys only limited powers. The State Government on the other hand enjoy original, inherent and largely undefined powers. Amendment of the Constitution clearly lays down that, “all powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people”. Following two facts come out on an analysis of the tenth amendment :—

(i) The States to enjoy limited powers. For the constitution prohibits certain powers to the States as well. It is noteworthy that under the American system no government has unlimited powers.

(ii) Not only this. Powers not granted to the Central Government and expressly forbidden to the States are reserved to the people. In other words the American system recognizes a system of fundamental rights of the individuals which no government national or State can legitimately invade.

(b) There is one another point to be noted. The American Constitution also recognises a sphere of concurrent jurisdiction, in which both the National Government and the State Governments can have a deal.

The American Scheme of Distribution.

The American scheme of distribution thus distinguishes between the following different types of powers :

(1) Powers conferred on the National Government alone e. g. defence, foreign relations, regulations of foreign and inter-state commerce ;

(2) Powers recognized as vested in State Governments alone e. g. creation of counties and chartered cities ;

(3) Powers exercised by either the national government or by the States i. e. concurrent powers ;

(4) Powers forbidden to the National Government only e. g. abridging freedom of speech or press etc. ;

(5) Powers denied to States only e. g. making of treaties ; and

(6) Powers denied to both the National and State governments e. g. abridging the right of a citizen to vote.

Let us now briefly discuss the powers that have been granted by the constitution to the centre or to the States.

(i) *Powers granted to the National Government.* According to Section 8 of Article I the following powers have been assigned to the Federal Government. These include powers to impose and collect taxes, duties imposts and excises ; to pay debts and provide for the common defence and general welfare of the United States ; to borrow money ; to regulate commerce with foreign nations and among the several States ; to coin money ; to establish post offices, post roads, to promote the progress of science and useful arts ; to declare war etc. etc. and to make all laws necessary and proper for carrying into execution these powers.

Thus powers of national importance in which uniformity of conduct is desirable have been allotted to the National Government.

(ii) *Powers prohibited to the Centre.* The Federal Government cannot suspend a writ of habeas corpus, grant titles of nobility, pass laws establishing or prohibiting a religion or abridging freedom of speech or press etc. etc.

(iii) *Powers prohibited to the States.* No State under the Constitution of U. S. A. has been allowed to make any agreement, treaty or alliance with any foreign power, to coin money, to keep troops or ships of war in peace, enter into war unless actually invaded, maintain slavery, abridge civic rights or deny the right of voting to its citizens on account of race, colour or past slavery etc.

(3) Supremacy of Judiciary.

Supremacy of the judiciary, has also been recognized in the American Constitution. It can declare the laws of the Congress to be unconstitutional if these come into conflict with the provisions of the Constitution. It has also to protect the life, liberty and property of citizens against the will of the majority. So important is this feature of the American system that James Beck calls the Supreme Court of America 'the balance wheel of the constitution' and Charles Beard regards it as the 'crowning feature of the federal system'.

Q. 3. Describe the process of Amendment of the Constitution of the United States of America.

Ans. Article V of the American Constitution lays down the following amending process :—

"The Congress, whenever, two-thirds of both the Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments which, in either case, shall be valid to all intents and purposes, as part of this Constitution when ratified by the Legislatures of the

three-fourths of the several States, or by conventions in three-fourth thereof, as the one or the other method of ratification may be proposed by the Congress."

An analysis of the Amending process :—

On an analysis of the aforesaid system the following features emerge :—

(a) *Two ways of initiative in the amending process :*

(i) The Congress itself may propose amendments. Each of the two houses, in this case, shall have to propose them separately by a two-third majority of their respective members.

(ii) Legislatures of two-third of the States can also apply to the Congress which should call a convention of the States to propose the desired amendment or amendments.

(b) *Two ways of ratification :—* But by whatever method an amendment has been proposed, it becomes valid only when it has been ratified in either of the following two ways :—

(i) Ratified by the Legislatures of three-fourths of the States; or

(ii) Ratified by conventions called for the purpose in three-fourths of the States.

(c) *The Discretion of the Congress :—* The Congress has been granted a sort of discretion in the ratification process of a proposed amendment. It is for the Congress to decide as to which of the two methods of ratification is to be adopted in a given case.

The Time Limit Rule. A Rule of recent origin lays down that an amendment is regarded three-fourths of the States within seven years.

Its Federal Shade. No state may be deprived of its equal representation in the Senate without its consent.

Some critical observations. It is worth while to make the following observations concerning this process of amendment :

(a) The process is too difficult and slow. During 150 years only 21 amendments could become law. Twenty nine amendments were carried in 47 years in Switzerland upto 1921. A Constitution must adjust itself to changing times. But the American Constitution is unable to do as its amending process is 'unwieldy and cumbrous.' In 1934 Congress proposed an amendment that it shall have power to limit regulate and prohibit the labour of persons under 18 years of age. Such an urgent and highly needed amendment could not be ratified even in 22 years by the required number of States.

(b) The amending process in America really typifies in itself the tyranny of the majority rule. Thirty three Senators can annul the will of the majority of the legislators in the two Houses with regard to the initiation of an amendment. Likewise 13 States can hold up the whole country from carrying on an amendment on the Statute book.

(c) It has also to be observed that the people of the country have no share as citizens either in proposing or in ratifying amendments. The American system of amendment can at best be called an adjunct of indirect democracy. The number of persons involved in the process of amendment is a very small proportion of the whole population, being only about 7400 in all. "What is worse, they participate in the process of amendment only incidentally i.e. as members of various Legislatures in the country and not in virtue of any mandate given to them by the country in that behalf."

The American view.

In the end it has to be pointed out what the Americans feel about the system of amendment of the Constitution. American opinion is in general inclined to support Madison's view that the method of amendment guards, against the extreme facility which would render

the Constitution too mutable and that extreme difficulty which might perpetuate discovered faults."

Criticism.

Hundreds of amendments were proposed between 1803 and 1865 and between 1870 to 1913, only to meet defeat through failure to secure the required two-third votes in the Congress. There arose at the opening of the present century an extensive criticism of the amending process. "It was noted that only three amendments—the thirteenth, fourteenth and fifteenth—had been adopted in the course of a hundred years and that those had been carried as the result of a civil war." It seemed impossible to amend the Constitution in the regular course of things, owing to the large majority for initiation by Congress, to say nothing of ratification by three-fourth of the States. It not only entails a cumbersome procedure but difficult stages through which an amendment must pass.

For the ratification of the amendment, States rather than population are required. This system is attacked as too conservative, because 13 small States out of a total number of 48 States may pool together and hold up an overwhelming majority in its efforts to make even the slightest modification in the scheme of government. This is tantamount to a veto of an absolute nature which the thirteen States, however small, exercise over the 45 States. "In other words, about one-tenth of the people of the nation, distributed in the eight geographical districts, can prevent nine-tenths of the people from effecting innovations in their system of government."

Another important cleavage in the Constitution amending process is that no time limit is prescribed, unless determined by the resolution of the Congress, within which the constitutional amendment is to be ratified, after having been passed by two-thirds majority of the Congress. Absence of such a prescription makes the issue a plaything of the States. Indefinite delay kills the purpose of the amendment and it consequently becomes a dead letter.

Another and perhaps more vital objection to the amendment process runs against the use of State legislatures in passing final judgment. "In this case ratification can be effected by a relatively small number of persons who happen to be in the legislatures at the time a proposition is submitted." The number of the persons concerned with the amendment is not so significant as the fact that these members are only incidentally concerned with it as legislators. They are elected for other purposes. Their main duty is to make laws for the States. "Often they are chosen to the passage of a proposed amendment by Congress, and are thus asked to decide a matter which was not even before the public when they were candidates." "Such a method is criticized because it is casual in its nature and does not provide for that special and searching consideration which a change in the supreme law of the land deserves."

At the top is the Supreme Court. The Supreme Court in the United States of America is considered to be the custodian of the Constitution. An amendment may pass through the congressional majority and even may have been ratified by the requisite number of the States, but ultimately its fate hangs with the Supreme Court which is empowered by the Constitution to declare it *ultra-vires* or *contra-vires*. This is criticised, because the judgments of the Supreme Court are often by a majority of five to four judges.

Q. 4. Describe the procedure laid down and the practice actually followed in the election of the President of the U. S. A. (Agra 1948).

Ans. The election of the President of the United States of America has now assumed an important and pageant spectacle. "It is an operation of the first magnitude, putting at stake the ambitions of individuals, the interests of classes, and the fortunes of the entire country." Nearly everybody in America from the President in the White House to a man in the street deeply interest themselves in the affair. It is a momentous event which involves

nationwide propaganda and entails an expenditure of millions of dollars on publications, meetings, "rounding up delegates," and "seeing that the goods are delivered."

But this was not the intention of the authors of the Constitution. They intended to remove the Chief Executive as far as possible, from the passions of the masses. The election of the President by the Legislature was ruled out because it was feared that such an elected person would be a mere tool in the hands of the Congress. They equally rejected the system of direct election, because it entailed the intervention of the party machine, and there was no other political institution which was so contemptuously looked down upon by the National Assembly as the political parties. Accordingly, it was provided that the President should be elected indirectly by a small body of electors chosen as the Legislatures of the States concerned may determine. The number of Presidential electors to be chosen in each State is equal to the number of representatives and Senators the State is entitled to in the Congress. All the electors of the different States are said to constitute an "electoral college" and it is this body which elects the President.

The framers of the Constitution by devising this method of Presidential election had contemplated a quiet and dignified procedure free from the turmoils, complications and hoodwinking of the parties. But their hopes were not to be realized. In election, existence of a party machine is a pre-requisite. The emergence of political parties, therefore, completely changed the nature of the election which has to-day become more of a direct nature than indirect election as originally contemplated. In the beginning the State legislatures elected the electors. The method was afterwards changed. A few months before the date of the election of Presidential electors, the parties start propaganda throughout the States, in favour of the candidates they have selected for the office of President in their party conventions held in the summer. Then on the first Tuesday, after the first Monday in November, all

the citizens entitled to vote meet in their respective States and record their votes for the Presidential electors. This is done strictly on party lines irrespective of the efficiency and personality of the candidates. Democrats voting for a Democrat candidate and the Republicans for Republican. The party which secures the plurality of votes in a State becomes entitled to all the Presidential electors of that State. Thus the election of the electors is sufficiently indicative of the party strength in contest and the person who is likely to be elected. The rest remains a mere formality.

The Presidential electors meet on the First Monday after the second Wednesday in December, in the capital of each State, and there record their votes for the President and the Vice President separately. Three certificates of the election result are then prepared. One of these certificates is deposited in the District Court, another sent by mail to the President of the Senate and the third one sent to him through a special messenger. On the sixth day of January the Congress meets in a joint session of the Senate and the House of Representatives when these certificates are opened and two tellers elected from each House to count the votes. The candidate who obtains the majority of total votes of Presidential electors (Presidential electors number 531-96 covering the Senate representation and 435 that of the House), i.e. 266 is declared elected. But in case there is no candidate who has obtained the requisite majority of votes the House of Representatives elects the President. In this election the representatives of every State are entitled to one vote only and the candidate securing the votes of the majority of the States is declared elected. If the House of Representatives fails to elect the President by the fourth of March, the Vice-President of the Republic is automatically made the President and the person getting the highest number of votes for Vice-Presidency is elected Vice-President by the Senate.

Nomination of the Presidential candidates is the most important stage in the election of the President. The

National Convention of each party nominates the candidates for the posts of the President and the Vice-President. In the beginning, the candidates used to be nominated by the party caucuses. This was afterwards abandoned, because it meant immense authority to party members in Congress and the party bosses. The method now followed is nominating by the National Convention. In January preceding the Presidential election each National Party Committee summons the National Convention to meet at a particular place in June. The party organization in each State is further instructed to elect delegates to the National Convention. The number of delegates which each State sends to the Convention is determined by the National Party Committee, with reference to its population and the importance of the State. Every State determines for itself how the delegates to the National Convention are to be chosen. Many States require that the delegates should be elected by the Primaries. In some they are elected by the State Committees of their parties. But the direct primary is now the method generally followed in electing the delegates. The National Convention of each party nominates party candidates for the Office of the President and Vice-President and the candidates receiving majority of votes cast are chosen as the party candidates. After having chosen their candidates the respective parties formulate the party programme for fighting the election.

It will be seen that at every stage of election the party intervenes and it is the party which is the President-maker. The method of election has become more direct and as soon as the electors to the Electoral College are elected it becomes known which is the party to win the election and who is to be elected. The election of the President is considered to be, "the greatest political battle in the world."

Q. 5. Describe the position and the powers of the President of the United States of America:

(Calcutta 1944, 39, 35; ; Punjab 1940, 38; Patna 1939; Dacca 1935)

Ans. "The President of the U. S. A. is both more and less than a king, he is also both more and less than a Prime Minister. The more carefully his office is studied, the more does its unique character appeal." So writes Laski about the American President. Indeed the most important office in the American system of Government is the Presidency. The makers of the Constitution stated that "the executive powers shall be vested in a President." They could not foresee the wonders of their nine word declaration. The fathers of the Constitution did not, and possibly could not, estimate that they have thus endowed the President with such potentialities which shall ever grow with time. In the written and rigid system of American Government his office is mostly a child of growth. To study his powers and influence is to study the growth and working of conventions in America to a very great extent.

His powers may be analysed as follows :—

(1) The President as the Chief Executive.

The President by the Constitution is to take care that the laws are faithfully carried "executed." But it does not mean that he can delay or suspend the execution of any law because he deems it to be unwise or unconstitutional. The wisdom of the law is a matter for the congress to decide while its constitutionality is for the courts to settle.

The President's authority over the direct execution of the law, especially through the Attorney General, is very great. He may instruct the Attorney General to institute an action against any one suspected of violating federal statutes. Since the principles which control the proceedings of officers in arresting, holding and prosecuting accused persons are general in character, the very spirit as well as tactics of law enforcement can be shaped by the President. Laxity or severity is, therefore, largely within his discretion.

In case of open resistance to the Government he may use the armed forces of the United States under conditions established by the federal statutes. He is also authorised to order out troops, if postal operations are obstructed or interstate traffic is seriously hampered by local disturbances. President Cleveland, President Wilson and President Harding had all turned to the assistance of the army on various grounds.

(2) President's appointing authority.

The constitution lays that President has power to make necessary appointments, including judges of the supreme court and all other officers of the United States, whose appointments are not herein provided for and which shall be established by law."

The President of course cannot give individual attention to all the appointments of the Government. He has, therefore, partly delegated this authority to the chief heads of the various departments. There are mainly two grades of officers—(a) Superior and (b) inferior. No special demarcation has ever been drawn between the two categories. But it is true that the services that are ranked as superior are filled up with the consent of both the President and the Senate while those that fall in the latter category can be filled at President's own discretion.

The heads of the various departments i.e. the members of the Cabinet are President's personal choice, though most of them are to be taken as a result of pre-election promises.

It has to be noted here that, at almost all events, the Senate, even if it belongs to the opposite party, ratifies the recommendations and nominations made by the President for the appointments. Military and naval appointments are always mostly at the discretion of the President and the judicial nominations, as recommended by the President, are usually approved by the Senate, though some times after a considerably hot contest and difference of opinions.

The Senate approves the aforesaid Presidential appointments only because a class of important federal officers who are to be scattered among the states are largely appointed according to the wishes of the Senate. This practice is known as '*senatorial courtesy*'.

Recess appointments are also made by the President when the Senate is not in session. Such appointments continue until the Senate is reconvened and confirms those appointments, or until the next session comes to an end. If not approved or confirmed by that time the appointment lapses or, if the President desires, it may be extended over by giving the same person another "Recess appointment." Thus the President can keep in office a person with whom the Senate has declared its unwillingness. A safeguard, however, is provided that a recess appointee, if the vacancy existed when the Senate was in session does not receive his salary until the appointment is confirmed.

(3) President's removing authority.

The President has also been empowered to remove officials even without the consent of the Senate. This power given to him, however, does not extend to all cases. The following three classes of services are exempted :—

(a) The judges of the Federal Court who can be removed by impeachment only ;

(b) The members of the various boards which have been set up by the Congress and who cannot be removed except in accordance with the conditions which the Congress itself has laid down to govern these services ; and

(c) Those employees who have secured their appointment through Civil Service Rules and cannot be removed "except for such causes as will promote the efficiency of the service." This practice has however, not been fully respected in its essence and spirit because the President still enjoys much personal power over 'patronage' and is chiefly interested to promote the stand of his party and thus to ensure the chances of his re-election.

4. Power of pardon and reprieves.

Like the ancient prerogatives of the kings, the President of the U. S. A. has the power to grant 'pardons and reprieves. He can pardon any federal official (not state official) for any offence (except impeachment), commute a death sentence to a term of life imprisonment, or give a convict complete freedom. But when forfeiture of office is one of the penalties imposed, he cannot restore the official to his former position. Clemency may be shown before or after the conviction.

5. Foreign relations and conduct of diplomatic relations.

The President is the official spokesman of the United States in international affairs. He assumes primary responsibility for American foreign policy and its results. Under constitution he nominates ambassadors, other public ministers and consuls. He negotiates treaties and receives ambassadors and ministers from abroad.

In practice the President can extend this significant power to more instances. He can dismiss an ambassador, or a minister of foreign Government for political reasons and embroil the country in a serious conflict. He may enter into treaties or wars with any country. He can create such a position before the Congress that the war-declaration upon any country becomes inevitable. Under the Constitution only treaties must have the approval of the Senate ; while other types of international understandings are left by custom to President's discretion. The President thus is free to enter into any sort of 'executive agreements' on his own authority.

The President in the vastness of his powers is not only limited to open diplomacy. He may even enter into secret agreements with foreign powers and commit himself to the pursuit of a specific policy. Through a high emissary sent to Tokyo in 1905, President Roosevelt came to terms with Japan on certain Oriental affairs. This was all kept secret. It was known only after the President's death.

6. The President as the Military Chief.

Under the constitution the President is the Principal head of the militia as well as the navy in all times either of peace or of war. He is the Commander-in-Chief and hence can call into play the services of all the forces when needed. He can also appoint military and naval officers with the advice and consent of the Senate—except in the militia—and in the times of War to dismiss them at will. Under the shadows of War the President may govern a conquered territory like an all powerful dictator. Special emergency powers are also conferred upon the President by the Congress to meet the problems arising out of the defence of the Nation. The war Powers Act of 1917 and that of 1942 which gave overwhelming powers to the President leave him little short of a dictator. "Both these Acts combined," estimates a modern thinker, "give the President the greatest power ever granted to any chief executive of the world."

7. The President and Legislation.

Although the chief executive in America lacks all initiative of legislation, as there is a separation of the Legislature and Executive there, yet the President is authorised by the constitution to send messages from time to time to the Congress recommending enactment of particular laws which he thinks necessary. These messages greatly influence the course of legislation by the Congress. The recommendations of the President are generally received favourably by the Congress unless there is a definite hostility between him and the latter body.

The President has also the power of vetoing a bill though his veto power is not absolute. He may refuse his consent to a bill passed by the Congress within ten days (Sundays excepted) after the bill has been submitted to him. A vetoed bill in order to become a law must again be passed in each House by a two-third majority. This is an effective power to prevent hasty and unwise legislation and has been frequently used for more than

six hundred times. But there is another kind of vetoing power which is known as the *pocket veto*. If the President does not give his assent to a bill within ten days and in the mean while Congress adjourns before the expiry of those ten days the bill lapses automatically. The President has effectively used this power many a time.

The American President cannot issue ordinances in order to interpret or in some places to supplement the law. But by usage he can issue proclamations laying down rules and regulations in connection with transactions of executive departments. He has also the power under the authority of the Congress to suspend general legislation with detailed rules that have the effect of law.

Thus the President of the U. S. A. today has emerged out not only as chief executive but also as a supreme legislator. The veto power has given him authority in every field. His decisions are almost sure to be accepted by the Congress and the people. He is not only the leader of a party but also the leader of a whole nation. He is the Commander-in-chief of the army, navy and air force. He, with the approval of the Senate, is the sole appointing authority. He can remove officials at his own discretion. He can make wars. He can enter into treaties and agreements. He infact embodies in himself if not the entire at least a major part of the potentialities of the American system of Government.

Q. 6. "The Cabinet in America has been called the President's family." Explain and Discuss.

Ans The Cabinet in the United States is a living contrast of the British Cabinet. The difference between the two can best be summed up in the words that "the British Cabinet is a team of colleagues who are equally representative of and responsible to the Legislature while the American Cabinet is only the President's family", of which he is the virtual head'.

The Cabinet in the U. S. A. consists of the departmental secretaries who are now ten in number and as a rule persons high in his (president's) counsel. They are merely personal assistants of the President. They are appointed by him with the consent of the Senate which, however, has seldom refused to approve of the President's choice. None of them are the members of the Congress nor are they responsible to it. The American President like the English King or the French President, cannot shift his responsibility to his cabinet or to any member of it. He cannot make them collectively or individually accountable to the country for the policies and actions of the Federal Government over which he presides. The American Cabinet is thus in no sense a committee of the Legislature. It is only an advisory body of the President. President Taft rightly observed "The Cabinet is a mere creation of the President's will. It is an extra-statutory and extra-constitutional body. It exists only by custom. If the President desired to dispense with it he could do so."

Cabinet a customary institution.

When the first department was created in 1789, Congress even did not recognize the possibility that these officers who now constitute the Cabinet would ever act in this capacity. "Indeed the Act creating the Treasury Department indicated a desire to bring the Secretary under Congressional control in many ways. The Senate, as a matter of fact, was then expected to serve as the President's advisory body; for the Senate shared with the President the power of making appointments and treaties and it was in the beginning sufficiently small in size to meet the requirements of a Council." Despite this view of the Congress in the beginning the first President of the United States George Washington regarded his four secretaries as his confidential advisors, though the term cabinet was not immediately applied to them. "He also exercised his constitutional right of requiring opinion from the heads of Departments and took them into his confidence in all important matters very soon after the first appointments

were made." Thus by a gradual process he welded them into an executive council for which by 1793 the term 'Cabinet' had come to be used.

The Cabinet and the President.

It is as a matter of fact a mistake to call the President's Council as Cabinet. Members of the Cabinet, in a parliamentary government as in England and France are usually representative of and responsible to the legislature and constitute the real executive functionaries in the countries." The members of the President's Cabinet, however, do not enjoy any such status or powers. Their status vis-a-vis the President is of distinct subordination. The American President is not the *Primus-inter pares* like the English Prime Minister but a really dominating executive head of the State. He can and does often override the opinion of his Cabinet members whose advice thus is merely recommendatory. Some Presidents have meetings regularly at stated times but others merely call sessions when matters in hand seem to require common action. The meetings are usually secret and no minutes are kept of transactions. As the special business of each department is discussed separately with the President, only affairs concerning the general policy of the administration are likely to be brought up for consideration in Cabinet meetings. Votes are seldom taken on propositions and they are of no importance beyond securing a mere expression of opinion. This is well illustrated by an incident related to President Abraham Lincoln. Once there was an important proposal for consideration before the Cabinet over which Lincoln presided. All the members of the Cabinet opposed to it except the President and Lincoln closed this grave debate by quietly saying: "Seven nays, one aye, the ayes have it." Nevertheless Cabinet meetings are of service to the administration, particularly in maintaining harmonious cooperation among the departments and in formulating the executive programme.

A concluding review. ²

It, therefore, follows that the Cabinet in the United States is the President's family for it is the kind of organization which the President wishes to make of it. Having no existence in law, it is not subject, as such, to congressional control. This point was finally settled in the first administration of President Jackson, when the Senate wanted the transmission of the contents of a Paper supposed to have been read by the President to the members of his Cabinet. He replied: "I have yet to learn under what constitutional authority that branch of the legislature has a right to require of me an account of any communication, either verbally or in writing, made to the heads of the departments acting as Cabinet Council. Congress cannot hold them to account collectively for anything that they do" And like the head of a family, the President is at once the immediate and the ultimate controlling chief of the Cabinet in U. S. A.

Q. 7. "Account for the weakness of the House of Representatives in America.

Ans. The House of Representatives is the lower Chamber in U. S. A. It is thus in the place of the National Assembly of France and the House of Commons of England, both of which are stronger than the upper chambers of these countries. But it is strange enough that the lower House in America is weaker than the Upper Chamber. There are various reasons which account for the weakness of the lower chamber in U. S. A. These may be summarised as follows :—

(1) Firstly it is the complete divorce between the executive and the legislature which accounts for the weakness of the House of Representatives. Not only the absence of direct relations between the executive and the Legislature lowers the status of the House of Representatives, it also accounts for its failure to dominate the Senate because in any parliamentary government the factor that gives dominating influence to the Lower House is not its

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legal supremacy but the responsibility to it. Where the executive, as in America, it not a creature of the Legislature, the supremacy of the Lower House is not secured.

(2) Unlike the House of Commons, there is no leader of the House of Representatives from whom may emanate the outlines of national policy, legislative measures and consequently the supremacy of the Lower House.

(3) The perpetuity of the Senate and the short tenure of the Lower House is the another cause of its weakness. After the general election unless summoned by the President in special session, the House has no power to meet sooner. The House which is to meet 13 months after it has been elected has to face another election 11 months ahead. The members do not take active interest in legislation and in translating their promises into action. They busy themselves in the new election campaigns. In the new election majority of the members of the old House might not be returned.

(4) The geographical and historical factors that make for the unusual character of American party politics are no less patent in the working of the two Houses of the Congress. There is absence of real party unity. This conflict lowers the tone and the integrity of the House.

(5) The Constitution provides coequal powers to both the Houses on financial measures. The House of Commons enjoys great prestige because of the fact that it has a control and power over the purse. This is not the case in America.

(6) It is not only the question of financial powers. The power of the Senate over matters of appointments, in spite of the convention of Senatorial courtesy, and foreign affairs, has made the Upper House stand conspicuous in the annals of the United States of America. A hostile Senate may even defy the President as it happened with Woodrow Wilson. Moreover, it is the Senate which sits as a court in impeachment cases. In England the powers

of the House of Lords had been curtailed. The powers of the House of Lords are nothing, in comparison to either the American Senate or the British House of Commons. But in America the Constitution and the conditions add to the powers and the prestige of the Senate and the House of Representatives automatically lowers down in its powers.

(7) The powers of the Congress are limited by the Constitution. The House of Representatives is not only shut off from the many fields of action by the constitution itself but even the powers that are left can only be exercised in many cases in a restricted way under a constitution that leaves the last word with the Supreme Court. The legislators therefore, have not only to consider what their constituencies want, but whether what they pass will be acceptable to the guardians of the Constitution or not.

(8) The judicial review also lowers the tone of the legislation. In order to please the members of their constituencies and ensure the probability of re-election, the Representatives sometimes introduce measures which are held by the Supreme court as ultra-vires. This also amounts to wasting of time of the House.

(9) The membership of the House of Representatives is another grave defect. The Senate is a smaller body consisting of 96 members and they are generally speaking men oldest in years, possessing mature judgment and wider political experience. The House of Representatives on the other hand is a bigger body composed of divergent elements and interests. Their technical skill, legal experience and superior talents enable the Senators to overshadow the House of Representatives.

(10) On account of its bulky composition the House of Representatives has been restricted in its debates and discussions. There are no restrictions in the Senate. The almost unlimited debate in the Upper House enables each member to hold up legislation, and especially appropriation bills, in favour of any particular interest which the Senator may represent. There can be no doubt that

the Senate is assuming an ever larger share in shaping federal legislation at the cost of the House of Representatives.

(11) The Senate like the House of Representatives is an elected body. Due to this fact people in America do not feel any particular attachment to the Lower House because the Upper House is equally representative of the Nation.

(12) The Senate is also considered the guardian of the rights of the Senate, because of the equal representation given in it to large and small states alike. But this is not the case with the House. The representation of the House of Representatives is on population basis and it is heavily represented by the bigger States. The smaller States are always sceptical towards its proceeding.

(13) Thus to the best Americans it seems preferable to become the members of the Senate. The strength of every House is but the strength of its members. Naturally, therefore, as ability and intelligence or in one word the cream of the Nation constitutes the Senate, the Upper House in America becomes stronger than the Lower House i.e. the House of Representatives.

Q. 8. Describe the powers and functions of the Congress in U. S. A.

Ans. The Congress only enjoys limited powers—powers which are enumerated in the constitution. It is authorised to use the means necessary and proper to carry them out in execution. In this regard it stands in sharp contrast to the English Parliament. The powers conferred on the Congress are thus only a few. As a matter of fact most of the great questions like the regulation of factories and labour, the provision of popular education, the old age pensions etc. etc. do not at all come within the scope of the Federal Government. They are entirely left to State Legislatures and constitutional conventions. The Congress still enjoys some significant powers. It has wide authority over inter-state relations

and as these are swiftly multiplying the control of the Congress is also rapidly extending. The powers of the Congress may be analysed as follows :—

1. Financial Powers.

The Congress has the power to levy and collect taxes, duties, imposts and excises and to appropriate money in order to pay the debts and provide for the common defence and general welfare of the U.S.A. All these taxes or duties may be uniform throughout the U.S.A. The Congress, however, cannot tax exports from a State. According to an interpretation of the Supreme Court the Congress cannot tax the "necessary instrumentalities" of a State Government, such as the salaries of (a) State and Local Officers and (b) State and Municipal Boards. The powers of the Congress to appropriate money are substantially unlimited except that appropriations for the army must not be made for a period exceeding two years. The regulation of monetary system is vested exclusively in the Congress. It has the power to coin money, regulate its value and fix the value of the foreign coins.

The Congress and the National Defence:

In respect of National Defence the powers of the Congress are almost unlimited, except by the Constitutional provision that the President shall be the Commander-in-Chief and that the military shall not be made for a greater period than two years. Congress can raise and support armies. It can create and maintain a navy and air force and provide for the organization and use of the *State militia*. Congress also declares war. It can also call every able bodied person to National Defence. This power was amply used during the last two wars. The States also are subject to the Federal Government in the military sphere, for they can keep no standing army or ships of war in the time of peace without the consent of the Congress.

The Congress and Commerce.

The Congress also enjoys certain powers in respect of commerce and business. It may regulate commerce with

foreign countries among the several States. It can make uniform laws on the subject of bankruptcy throughout the U. S. A. It can fix the standards of weights and measures, control patents and copyrights and establish post offices and post roads. It has to be noted here that the term commerce does not only include the transport of commodities. It also embraces traffic and intercourse in all important branches such as railways, telegraphs etc.

The Congress and the States.

The Government of the territories and districts belonging to the U. S. A. is vested in the Federal authorities. The right to admit new states and supervise the organization of territories into states is also vested in the Congress.

The Congress and the executives.

Notwithstanding the theory of the separation of powers, Congress may, to some extent control the various executive departments by statutes regulating even the minutest duties of the Cabinet ministers e. g., the power to determine the number of departments to provide for their internal organization, fix salaries, define duties etc. etc.

The Congress and Legislation.

In carrying into execution the powers vested by the constitution in the Government of the U.S.A. or in any department or office thereof, the Congress may make all laws which shall be, "deemed necessary and proper." The courts have in general given very liberal interpretation to this phrase. The Supreme Court has repeatedly declared that the Congress possesses the right to use any means which may seem conducive to it in the exercise of its express legislative or other powers.

The Judicial powers.

Besides the aforesaid the Congress also enjoys the following judicial powers :—

(1) It may define crimes against federal laws ; but it has no power to define crimes in general. This falls within the scope of the States. Naturally, therefore, the nature both of crime and punishment differs from one State to the other. Certain actions which are a crime in one State are not looked upon as crimes in others. In this respect America's system fundamentally differs from the German plan where the National Legislature enjoyed the power to regulate the whole domain of Civil and Criminal law, judicial organization and procedure. It is obvious thus that the power of the Congress to define crimes and to provide punishments for them is narrowly limited.

(2) Congress may also exercise large powers over the Federal Judiciary. It may determine the number of the Supreme Court Judges, fix their salaries subject to certain limits and define their appellate jurisdiction. The creation of the interior Federal Courts is subject to its approval. It may also define the jurisdiction of these courts and provide the methods by which cases may be drawn from the State Courts into the federal courts.

(3) Congress also enjoys the power of removing the civil officers of the U.S.A. by the process of impeachment. In trying cases of impeachment the Senate acts as the High Court, when the President of the U.S.A. is being tried the Chief Justice of the Supreme Court presides. The power of preferring and prosecuting charges against offenders is vested in the House of Representatives.

This in brief is a survey of the manifold and varied powers of the Congress in America.

Q. 9. The American Senate has been characterised to be the strongest Upper Chamber in the world. Examine the powers of the Senate and account for its strength and importance.

(Allahabad 1943 ; Punjab 1941)

Ans. The Constituent Assembly of 1787 unanimously agreed to have bicameralism in the United States. The conservative element which dominated the Assembly and

the advocates of State rights joined hands with them in making it the strongest Upper Chamber. They also sought to realize another object in the Senate. A small body consisting of matured and experienced people who were to be indirectly elected as member of the Senate were thought not only to exercise restraint on the radicalism of the House of Representatives, but also to function as an Advisory Council to the President. But with the development of the President's Cabinet this object could not be realized. Still, it is a fact that the Senate has well preserved its supremacy and the House of Representative is shadowed under its powers.

The Senate enjoys the following legislative, executive and judicial powers.

Legislative Powers.

1. It enjoys coequal powers within the House of Representatives in ordinary legislation.
2. Legislative measures may emanate in either House except money bills which must originate in the House of Representatives.
3. But the Senate has an absolute power to amend or reject any money bill.

Executive Powers.

The intention of the authors of the Constitution was that the Senate should not remain merely a legislative chamber. It was intended to be to the President what a Privy Council was in England to the King. Therefore, it was endowed with specific and substantial executive powers. All the appointments made are subject to the confirmation of the Senate. But a convention commonly known as the "Senatorial Courtesy" has developed in America. According to it the Senate does not now refuse its consent to the President's choice of heads of the Departments. But in return with regard to Federal appointments in the States, the nominees of the Senators

representing their respective States are accepted by the President.

Treaty Making power:

It is the President who negotiates treaties and it is in his name that all treaties are concluded. But every treaty so concluded must be ratified by two-thirds majority of the Senate. The Foreign Affairs Committee of the Senate is also an important body which exercises considerable influence over the foreign policy of the nation. The president of the Federation always keeps himself in close touch with this Committee and regularly acquaints it with the development in the international affairs and the progress in the negotiation of treaties. If the President becomes sceptical and ignores either the Senate or the Committee, the scales are turned against the President as it happened in the case of President Wilson. When President Wilson returned from Europe after having signed the Covenant of the League of Nations, on behalf of the United States of America, the Senate refused to ratify it.

Judicial Powers.

The Senate is the Court for the trial of impeachment. The impeachment against the President, the Vice-President and the Civil Officers of the United States is preferred by the House of Representatives and it is tried and decided by the Senate. Conviction by Senate cannot carry a greater penalty than removal from office and disqualification to hold and enjoy any office of honour, trust or profit in the United States.

Other Powers of the Senate.

(i) The Senate also possesses though not by Constitution, the powers of investigating into various scandals and cases of suspected corruption. The investigating Committees set up by the Senate for the purpose have power to summon witnesses, call for papers and documents and any other information which may be deemed necessary. In a non-parliamentary form of Government this is a good brake to the vagaries of the executive.

(ii) The Senate shares with the House of Representatives the power to propose amendments to the Constitution and the power to admit new States into the Union.

(iii) If in the election of the Vice-President no candidate secures an absolute majority, the Senate chooses the Vice-President from among the two candidates who secure the largest number of votes.

The Senate is the judge of elections, returns and qualifications of its own members.

Causes of its Power.

While Upper Chambers in other parts of the world have been declining in power and importance the Senate of the United States has added to its influence and prestige. It is the most powerful Second Chamber in the world, for the following reasons :—

A dignified House.

Firstly, it is a dignified House. It represents the States as political units. The Senators, as things stand today, are not the representatives of the State but the representatives of the nation. The local interests which so dominate in the House of Representatives are conspicuous by absence in the Senate. This gives to the Upper Chamber a natural precedence over the Lower House. It also adds to its majesty and dignity.

Its Composition.

Secondly the composition of the Senate also accounts for its prestige. It is a smaller body as compared with the House of Representatives and its members are seasoned veterans with mature judgment and vast experience. It is, therefore, more effective and the Senators are conscious of their importance.

Its permanence and stability.

Thirdly being an elected Chamber which represents the principle of permanence and stability it carries the

palm over the House of Representatives. The Lower House has a life of two years, whereas the Senators are elected for a term of six years, one-third retiring every second year. This fact gives its authority and vitality. Many of the abler members of the Lower House, after building up a reputation there, are elected to the Senate. This means that the average ability in the Senate is greater as it draws the best men from the House.

Its privileges.

Fourthly, the outstanding characteristics of the Senate, as compared with the House, are greater simplicity of the rules, almost unlimited freedom of debate and greater importance of the individuals. The Senators, accordingly, get a far greater opportunity to discuss different issues in detail and this privilege is denied to the members of the House of Representatives. This again accounts for the prestige of the Senate.

A Brake and a check.

Fifthly, the Senate also acts as a brake upon the President. With the vastly increasing power of the President such a check is necessary. Its power of ratifying treaties means that the last word rests with the Senate. A Senator has the ear of the public and the Senate is the only body left to keep administration within bounds. It may bring public opinion to the point of forcing a Senatorial investigation of alleged abuses and administrative incompetence.

Its powers.

Sixthly, though a second chamber, it is certainly not a Secondary Chamber. Its co-equal powers of legislation, including the financial powers, with the House of Representatives indicates that unlike the House of Lords, the voice of the Senate is effective and a matter of fact. The executive powers of the Senate are singular, because the House of Representatives does not possess any. Moreover, these are unique, because no other Upper Chamber in the world possesses such powers.

A Sum up.

The cumulative effect of all these is that the powers of the Senate remain unparalleled and the contrast drawn by de Tocqueville, some hundred years ago between the House of Representatives and the Senate, is true even today. He wrote, "On entering the House of Representatives of Washington one is struck by the vulgar demeanour of that great assembly. The eye frequently does not discover a man of celebrity within its walls. Its members are almost obscure individuals. At a few yards distance from the spot is the door of the Senate which contains within a small space a large proportion of the celebrated men of America. Scarcely an individual is to be perceived in it who does not recall the idea of an active and illustrious career; the Senate is composed of eloquent advocates, distinguished generals, wise magistrates, and statesmen of note, whose language would at all times do honour to the most remarkable parliamentary debates of Europe."

Q. 10. Give the composition and powers of the Supreme Court of the United States of America.

(Allahabad 1944; Punjab 1941, 38; Andhra 1939; Nagpur 1937).

Ans. The necessity of a Federal Court or the Supreme Court, as it is known in the United States of America, in a Federation is a well recognized principle in Political Science. The architects of the American Constitution were fully alive to this fact. They realized the possibility of disputes, arising between the units of the Federation and the Central Government, or between one State and another. They concluded as such, that there must be a competent court to decide these disputes. Moreover, Federation pre-conceives a written Constitution which necessitates interpretation. To interpret the Constitution there ought to be a well organized judicial body. Thirdly a Federal Court is to consider whether the laws passed by the Central Government and the members of a Federation are in accordance with the provisions of the Constitution or not. Finally, criminal matters, which involve

violation of the Federal laws cannot be left as the concern of the State Courts. The Constitution of the United States of America does not provide for any authority under which Congress could require State Courts to try federal criminal cases.

Its composition.

The Supreme Court, according to the provision of the Constitution of the United States, is the highest court in the country. It is one of the most venerated, powerful and dignified political institution. The authors of the Constitution did not fix the number of the judges of the Court. It commenced with six and today there are nine including the Chief Justice. The judges are appointed by the President subject to ratification by the Senate and they hold office during good behaviour. Generally, persons of good old age who have distinguished themselves on the bench or at the bar are elevated to the Supreme Court.

Its jurisdiction.

The jurisdiction of the Supreme Court is both original and appellate. The Constitution specifically provides for its original jurisdiction and it includes cases affecting Ambassadors, other public ministers and Counsels and those cases in which the State is a party. Most cases reach the Supreme Court as a part of its appellate jurisdiction. The original jurisdiction of the Court is prescribed by the regulation of the Congress. It hears appeals against the decisions of the Federal Courts and the State Courts. But it entertains only those appeals from the State Courts which involve interpretation of the Constitution. It also takes cognizance of all those cases where the statutes passed by the Congress and the treaties of the United States are involved, or where the party in the case has claimed that the laws of the States infringe the privileges and rights of the citizens as granted by Federal laws. The Supreme Court is a pyramid and at the bottom are different Federal Courts and all these courts are amenable to the jurisdiction of the Supreme Court.

Organization.

The third article of the Constitution deals with the organization of the Federal Courts. It runs 'The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts, as the Congress may from time to time ordain and establish.' Accordingly, Federal Judiciary consists of three kinds of Courts.

First, we have the District Courts. These Courts are at the bottom and there is at least one in each State. If the State is sufficiently large with huge population there may be many such courts in that State, each having a specified territory under its jurisdiction. Normally a District Court is presided over by a single judge, but some courts have two or three judges. District Courts are courts of original jurisdiction. With the exception of a few cases where the Supreme Court has original jurisdiction, all cases relating to the subjects referred to above, originate in the District Courts.

Above the District Courts are the Circuit Courts. These courts are of appeal from the District Courts. They have no original jurisdiction. Altogether there are ten Circuit Courts of Appeal. The whole country is divided into ten circuits and each circuit has its own court. For each Circuit Court there are at least three judges. In some there are four to six. Each judge of the Supreme Court is assigned the charge of one Circuit Court, but one Judge has the charge of two circuits. In many cases the decisions of the Circuit Courts are final and in others the appeal lies with the Supreme Court.

Criticism.

The Supreme Court in the United States has assumed an unrivalled position and it is now considered to be the fourth wheel in the Constitution of that country. Its decisions are generally respected. It is sad however to note that its judgments often savour of partisan outlook. In majority of the cases the judgment is by 5 to 4. It is never a unanimous judgment. The issue is decided by a

disgrace
bare majority of one and this nature of things is often seriously questioned. Moreover, while giving their judgments the judges are often obliged to deal with the political issues in order to arrive at conclusive results. This is criticised and the judges are often stigmatised. Finally, the judges of the Supreme Court are conservative in their outlook and therefore many a useful legislation had been declared *ultra vires*. It is not the utility of the law or the exigency of the time which the judges keep in view but the letter of the Constitution. This also accounts for the conservative nature of the American Constitution and a good reason to explain why there are only a few amendments in the Constitution of the Country.

Constitution of Canada

THE CONSTITUTION OF CANADA

Q. 1. Define the term 'Dominion Status, and explain the implications of the Statute of Westminster.

(Agra University 1943)

Ans. The Statute of Westminster of 1931 was another feat of constitutional development in the history of the United Kingdom. Canada, Australia, Newzealand, Newfoundland, Union of South Africa, and the Irish Free State (now known as Eire) are called the 'Dominions.' and the term 'Dominion Status' is used to indicate the position of the mutual relations of Great Britain and the Dominions. The most authoritative definition of Dominion Status is that of the Balfour Declaration, which was adopted by the Inter-Imperial Relations Committee. The Balfour Declaration while defining it maintained that the above mentioned countries "are autonomous communities as within the British Empire equal in status, in no way subordinate to one another in any respect of their domestic or external affairs though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations." The Imperial Relations Committee added that "every self-governing member of the Empire is now the master of its destiny. In fact, if not always in form, it is subject to no compulsion whatever."

Ever since the passing of the British North America Act of 1867 up to the grant of the responsible self-government to the Union of South Africa in 1909, there had been placed certain statutory restrictions over the powers of the governments of these Dominions. These restrictions were of legislative, executive and judicial nature. All legislative measures before becoming a law, required the assent of the King who was represented by the Governor-

General. The Governor-General, therefore, in the name of King could withhold his assent to any law passed by the Dominion legislature. The Governor-General could also, in the name of the King, sometimes ignore the wishes of the Ministry. The Dominion legislature could not pass any law repugnant to the Acts of the Imperial Parliament nor could it legislate against the spirit of the Merchant Shipping Act (1824) and the Colonial Laws Validity Act of 1865. Similarly the judicial power of the Dominions was restricted by the provision of an appeal from the highest judicial tribunal of the Dominion to the Judicial Committee of his Majesty's Privy Council. The Canadian Parliament was also debarred to amend the North America Act.

But with the passing of the Statute of Westminster the Dominions have acquired the status of equality with Great Britain inside the British Commonwealth of Nations, in all matters internal as well as international. We may discuss these implications under three heads :—

- (1) Internal affairs.
- (2) External Independence.
- (3) Secession.

(1) Internal Affairs.

(a) *Legislative.* The Dominions are free to make any law they desire and there is no limitation to this power. Further, these laws cannot be declared unconstitutional even if they are repugnant to laws passed by the British Parliament. Moreover, the British Parliament may not pass laws applicable to the Dominions except with their consent. This legislative autonomy is expressly recognized in the following clauses of the Statute of Westminster :

(1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a

Dominion shall be void or inoperative on the ground that it is repugnant to the laws of England or to the provisions of any existing or future Act of the Parliament of the United Kingdom, or to any order, rule and regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion.

(3) It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

(4) No act of Parliament of the United Kingdom passed after the commencement of this Act shall extend or be deemed to extend, to a Dominion as a part of the law of that Dominion, unless it is expressly declared in that Act that the Dominion has requested, and consented to the enactment thereof.

The Governor-General, therefore, cannot veto any law though his assent is still necessary. The Dominions are also free to administer their own laws and have them interpreted by their courts without interference from or subordination to Britain. There are some laws and conventions which still appear to impose certain limitations over the legislative sovereignty of a Dominion, but they are not real limitations; since the Dominions possess full liberty to abolish, repeal, or amend them.

(b) *Executive.* Since the passing of the Statute of Westminster the Dominion Governor-General has acquired a new position and prestige. He represents now not the King of England but the King of the Dominion concerned. He is appointed by the King by letters patent issued under Royal Sign Manual, but in the selection of the Governor-General the King is guided by the advice of the Dominion Ministry. The Imperial Conference of 1930, had conceded to the Dominions to take its own choice of the Governor-General. Accordingly, Sir Isaacs was appointed Governor-General of the Commonwealth

of Australia and Lord Bessborough as the Governor-General of Canada, on the recommendations of the respective ministries. Even leave of absence to the Dominion Governor is given through the Prime Minister of the Dominion and not through a Secretary of State.

The position as it stands to-day is that the authority of the Dominion Governor-General has become the prototype of the English King. He is a constitutional head who acts on the advice of his ministers and his actions are not his own coins.

(c) *Judicial.* Appeals may be taken from the Dominions to the Judicial Committee of the Privy Council in London. But this is hardly a restriction. It is open to the Dominion Parliaments to abolish such a provision and Canada has already abolished this in respect of criminal cases. The King has the Prerogative of mercy, but it is again open to the Dominion Parliaments to regulate or cancel them.

2. External Independence.

The principle of equality of status applies to the sphere of external relations as well. It means each Commonwealth Government is the final judge of what its policy in any matter should be, and of the extent to which it should co-operate with other Governments in the conduct of external affairs. This follows naturally from the fact that each Government is responsible to its Parliament for the policies that it pursues and for the manner in which it applies them. In fact the Statute of Westminster legalises the external sovereignty of the Dominions, a sovereignty which had existed in several dominions even before 1931.

(i) The admission of the Dominions to the League of Nations as independent members and their election to the Council of the League was an important example of their independence.

(ii) Every Dominion has the right of being represented in foreign States through its own ministers. In 1924 Ireland sent its Envoy-Extraordinary to the United States and then to Paris, Berlin, Madrid and the Vatican. Canada appointed its representatives at Washington, Tokyo, Paris and as late as 1942 to U. S. S. R.

(iii) They have also carried on independent negotiations with foreign States on commercial and allied questions and concluded treaties with them signed by their own representatives. Canada took the lead and in 1923 concluded the Halibut Fishery Treaty with the United States. But certain conventions have been evolved to preserve the greatest possible measure of unity, and to obtain, the maximum co-operation, in the foreign policy of the members of the British Commonwealth of Nations.

(iv) The Dominions also possess the right to renounce obligations in respect of treaties to which it has not been a party *e. g.*, none of the Dominions accepted the obligations imposed by the Locarno Pact of 1925 which had been negotiated and signed by Britain without their consent.

(v) The Dominions have the right to join or abstain from a war in which Great Britain is engaged. It is now a settled doctrine that no Dominion needs take steps to aid the Empire in any war which has not been brought about by its own action. On the declaration of the last war the Parliament of each Dominion discussed the question of its participation in the war and approved of such a declaration independently. Eire did not participate and declared her neutrality. The South African government of General Hertzog moved a motion for neutrality of the Union of South Africa and it was defeated by 80 votes against 67. The Hertzog Government resigned and a new Cabinet under General Smuts was formed and war against Germany was declared on 9th September, 1939, though England had declared war on September 3, 1939.

(vi) The Dominions have the independent right to recognize or not to recognize a particular State. Reco-

gnition by England does not mean a recognition by the Dominions. Canada separately recognized the U.S.S.R.

(3) Secession.

Some constitutionalists are of the opinion that the Dominions have acquired, under the Statute of Westminster, the right to secede from the British Commonwealth of Nations. It is a controversial point. Keith remarks that "the union of the parts of the Commonwealth is one which cannot be dissolved by unilateral action." But the Irish Free State has eliminated the Crown in her internal affairs. In the Union of South Africa, at least there had been a move for secession, though it seems inconceivable that a Dominion will secede and lose the protection of the Commonwealth against any foreign aggression. The possibility of secession are, therefore remote, but if any one of the Dominions does so there is nothing which can bind it.

Q. 2. The Father of the Constitution (Canadian) were not wedded to narrow ideas of federalism."
Discuss. *(Punjab 1941, 1939, 1936.)*

Ans. A federation is the result of union between the homogeneous States. These States federate either for the preservation of economic interests or to safeguard themselves from foreign aggression. But for federation there ought to be a desire to federate and this desire should manifest itself in union rather than in unity. The units must keep their individuality and should not merge their identity into the newly created Government. The United States of America is a typical example of a federation where the units have preserved their inherent rights and the powers of the Central and the federating units are definitely demarcated. The Constitution is also sufficiently rigid and there is less possibility of encroachment by the central authority on the powers within the jurisdiction of the States.

The nature of the Canadian federation is different from that of the United States. Canada is a country which did

not present a homogeneous race of people with religious cultural and language affinities. The social institutions of English and French Canada were also different. The clash of racial differences, stiffened by the differences of religion, culture and language had separated the inhabitants of Canada into two hostile divisions of French and English. But sober minds had indeed always believed that a federal union of the two Canadas—the English and French—alone could guarantee the continued existence of their country, development of their trade and commerce and solution of their administrative problems. A unified State was tried in 1840, but it had failed. A loose confederation, it was thought, would have been more than useless. Man like Sir John MacDonal, who was responsible for the creation of the Canadian Federation, would have liked to set up a “United Kingdom.” But they subsequently realized that only a federation could satisfy the diversified interests in the country. Thenceforth all their efforts were directed to give the proposed federation as strong a leaning towards the unitary system as circumstances would allow. The American Civil War of 1861, which synchronised with the years in which the federal idea was shaping itself in Canada had caused many Canadians to despair of federalism, as it had worked itself out in the United States.

All these circumstantial and environmental influences had an important effect on the contemplated Canadian Federation. The Federal Union which emerged from the North America Act of 1867, therefore, aimed to :

- (i) reduce the possibility of a serious friction between the Centre and the units, and
- (ii) In the distribution of powers the avowed aim was to strengthen the central authority.

To achieve this object the American principle of division of powers was reversed. According to the North America Act the Provinces in Canada are given certain specified powers whereas the residuary authority is vested

in the Centre. The Dominion was intended to have power over all subjects which in time might acquire national importance. In fact the powers of the federation were so wide and comprehensive that Sir John MacDonald asserted that in any contest over jurisdiction, the Centre must win.

Secondly, the Lieutenant Governors of the Canadian Provinces are appointed by and dismissed from office at the discretion of the Central Government. In the United States the Governors of the different States are the result of popular choice. In Australia they are appointed by the Crown. But the Canadian system, as stated before, is the result of unitary tendencies. There was a general inclination to regard the Lieutenant-Governors as instruments of the Dominion Government.

Thirdly, the Federal Government can disallow any legislation passed by a provincial legislature, a power unknown in Australia or the United States. Why was this power given to the Centre? It is an admitted truth that the Canadian Federation started with a disposition to regard the provinces similar to the municipalities exercising delegated authority.

Fourthly, in a Federation the Constitution must be a rigid one. That is to say that it should be changed by authority, above and beyond the ordinary legislative bodies whether Federal or State legislatures, existing under the Constitution. The North America Act does not empower Canada to change her Constitution. The reason is simple. The provinces were afraid that such a power in Canada would be used contrary to their interests. The British Parliament can alone amend the Constitution.

Finally, in a federation the Upper Chamber is the reflection of units' representation and every unit of federation gets an equal representation therein. In Australia and the United States, each State, big and small, enjoys equal representation in the Senate. In Canada only a modified system was adopted. The Canadian Senate lacks the federal basis. The Fathers of the Constitution having

decided in favour of a second Chamber nominated by the Crown, could not give it a truly federal character.

The result is that there is ample truth in the statement that "the Fathers of the Constitution were not wedded to narrow ideas of federalism." Federalism was thought a device for bringing together the diverse elements-not homogeneous to solve the administrative difficulties by making the Centre strong, possessing wide and comprehensive powers. There was no desire for a union. The prevailing tendencies were unitary, and Canada is a federation in which unitary elements are well marked. Many constitutional lawyers, notably Lord Haldane, were of the opinion that the Canadian Constitution is unitary and not a Federal one. This however, is an erroneous view.

There are two main criteria which distinguish a federal from a unitary Government. Firstly, in a Federation the provinces must enjoy substantial political rather than mere administrative or municipal powers. With the growth of the Canadian Constitution, it can now be said that a Canadian province today enjoys wide political and legislative authority. Within the sphere of powers granted to them by the Constitution the provinces are autonomous. They can amend their own Constitution, levy direct taxes, control administration of justice, civil and criminal. The status of the provinces is in no way similar to a municipal institution. The power of disallowing the provincial legislation, which was so frequently used before 1896, is now mainly confined to Acts which infringe the principles of the distribution of legislative power in Canada, or contravene imperial interests applicable to Canada.

A Lieutenant-Governor though appointed by the Central Government and under the legal obligation of being dismissed by the same authority, is no longer considered to be the instrument of the federal government. His appointment by the central executive, as a matter of fact, is now an evidence of the federal link and does not imply subordination. Once legally appointed the Governor

enjoys full executive authority within the provincial sphere, as the Governor-General does in the federal sphere.

The test of a Federation, in the second place, is that the Centre by its own authority should not be able to deprive the units of their powers granted to them by the Constitution. This condition is also fulfilled in Canada. The Canadian Constitution though not so rigid as that of the United States, cannot be said to be flexible. Today as the conditions stand, the British Parliament can alone amend the Constitution, and it always does so on a united demand made by the Dominion and the provincial authorities. Moreover, the Central Cabinet has, from the very beginning, assumed a federal aspect. By convention the Cabinet has become, since 1867, a reflection of provincial, territorial religious and social groupings in Canada. Thus, the National Cabinet which controls the destiny of the people as a whole, is generally a balancing of interests. This leaves no possibility of the Centre arbitrarily encroaching upon the authority of the provinces.

To conclude though the Constitution began with what appeared to the 'Fathers' such sufficiently strong central control over the provinces, as would render them in their executive and legislative capacities, subordinate to the Central Government while the ambit itself of their legislative authority was intended to be such as to leave the vast undefined residuum to the Dominions. But we now witness on the North American Continent singular political development. The American federation began with a theory of State rights. Today we find there the ever increasing growth of federal power. Canada began its political existence with the scales heavily weighted in favour of the central authority. Today the Canadian provinces enjoy powers almost greater than those of the States in the American Federation.

Q. 3. Give in broad outline the salient features of the Canadian Government.
(Punjab 36, 1939).

Ans. The British North America Act of 1867, on which hinges the Canadian administration, was based generally on the famous Quebec Resolution of 1864. Resolution No. 3 ran : " In framing a Constitution for the general government, the conference with a view to the perpetuation of our connection with the mother country and the promotion of the best interests of the people of these provinces, desire to follow the model of the British Constitution so far as our circumstances permit." This was embodied in the preamble of the Act of 1867, which stated : " Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland with a Constitution similar in principle to that of the United Kingdom." Accordingly, the Constitution of Canada is based generally on the British, though a federation, and follows most of the British traditions. The salient features, of the Canadian Government are :—

1. Cabinet form of Government.

In England and Canada there is a Cabinet Government as opposed to the Presidential Government in the United States of America.

By slow and gradual evolution the Governor General of Canada enjoys identically nominal powers like the English King ; which is the *sine qua non* of parliamentary government.

2. Bicameralism.

The legislature consists of the two Houses—the House of Commons and the Senate. The House of Commons is the popular House in Canada and is the centre of gravity. The ministry is formed from the majority party of the House and is collectively responsible to it.

The Senate is composed of members nominated for life by the Governor-General. This process of nomination is a compromise between the hereditary system of the

composition of the English House of Lords and the life membership of the Senate.

3. Its centralism.

The units of the Canadian federation are designated as provinces and not as States. By Constitutional provision the provinces enjoy a subordinate position to the Centre. The Centre possesses the overriding power as well as the residuary powers. This gives the Canadian Constitution the complexion of a unitary government.

4. The Privy Council.

The British North America Act of 1867, provides for the creation of the Privy Council of Canada on the lines of the British Privy Council. This feature of the Canadian Constitution is not to be found in any other British Dominion Constitutions.

5. Its rigidity.

Canadian Constitution can be amended by the English Parliament. In this respect, too, the Canadian Constitution is different from the other British Dominion Constitutions. It is rigid for it cannot be amended by the ordinary process of law-making.

It shall, thus be clear from the above that Canada is more akin to Great Britain in her political institutions. Even many of the conventions of the English Constitution do find an appropriate place in the administrative machinery of Canada, though with slight modifications here and there.

Q. 4. Give in outline the status and powers of the Canadian Governor-General.

Ans. King George VI is the King of Great Britain as well as Canada. But it is to be noted that His Majesty is the King of Canada not because he is the King of Great Britain, but because he is the King of Canada separately. It does not also mean that George VI directly rules the country. The administration of Canada is

carried out in his Majesty's name through his representative who is known as the Governor-General.

His appointment.

The Governor-General is appointed for a term of five years. Formerly, he was appointed with the advice of the Cabinet in England, but the Imperial Conference of 1930 definitely held that all future appointments of the Governor-General should be on the recommendations of the Canadian Government. This constitutional convention has been steadfastly adhered to and the selection of Lord Bessborough on February 9, 1931 was made on the responsibility of the Canadian Ministry. But this method of appointment does not exonerate the Governor-General from his allegiance to the King. In fact all officers of the State including the Governor-General are required to take the oath of allegiance to His Majesty the King, who is both the King of Great Britain as well as Canada.

His Powers.

The powers of Governor-General are extensive like that of the King in England. But like the King his powers, too, lie on the cushion. The explanation is not far to seek. In Canada, as it is in England, there is a Parliamentary form of Government. In a country with such a form of government the chief executive head of the State must for all intents and purpose, be a constitutional ruler with titular powers. In Canada, as well, a student of the comparative constitutions must differentiate between theory and practice. Let us see what are the theoretical or legal powers of the Governor-General and finally conclude with the practical application.

Executive Powers.

The executive powers of the Governor General may be summarised as follows :—

(a) *His appointing powers.* He appoints the Lieutenant-Governors of the Canadian Provinces. They can also be removed from their office by the orders of the Governor

General. Since the Governor-General has now become a constitutional ruler, therefore all such appointments and dismissals are in reality the handiwork of the Dominion ministry. According to the letter of the law the Governor General appoints his ministers and they remain in office during his pleasure. But in Canada by virtue of the established conventions the position of the Governor-General has become identical with his prototype the English King. Like the King the Canadian Governor-General has no choice in the selection of his ministers. The way is well carved out for him by the established practice of the parliamentary form of Government. He follows the usual course of summoning the leader of the majority party in the House of Commons and entrusts him with the duty of forming the Government. The ministers are the selection of the Prime Minister out of the ranks of his party and the Governor General must acquiesce to that selection.

The Governor General also appoints the judges of the Supreme Court and the Provincial Courts, Commissioners and a host of other officers. But again it is the action of the responsible ministry rather than the Governor-General.

(b) *His powers of removal.* By the process of the same convention the power of removal of the ministers by the Governor-General has now become obsolete. A minister remains in office so long as he retains the confidence of the legislatures. Since every ministry is responsible to the Representatives House collectively, the dismissal of one minister means the dismissal of the whole ministry.

(c) *His military powers.* The Governor-General is the Commander in chief of all the forces of the dominion. He is the head of the navy, air and the land forces.

Legislative Powers.

The Governor General also exercises the following legislative powers :—

(a) *The Summoning of Parliament.* The Governor-General summons, prorogues and dissolves the Parliament. These are also nominal powers of the Governor-General. It is the ministry which determines when the Parliament is to be summoned or prorogued. As regards its dissolution it is the right of the Prime Minister to ask for dissolution. The Bying episode of 1926 finally settled the issues of the Right of Dissolution.

(b) *The Governor General's Veto.* The Governor-General may assent to any Bill, veto it or reserve it for the assent of His Majesty is an obsolete practice now. It is the majority which decides the fate of the bill and the majority is the voice of the majority party in the legislatures. If any bill is reserved for the assent of His Majesty it shall mean that the Governor-General is doing something which may negative the wishes of the majority party and, therefore, that of the government of the time. The Parliamentary Government cannot brook this political insult. Similarly the power of veto has also come into disuse and it is a thing of the past now.

(c) *Governor General and the Provincial bills.* He has also the power to disallow any bill passed by the provincial legislatures. This, too, is the part of the Federal Government than the function and discretion of the Governor-General.

Judicial Powers.

As a representative of the King the Governor-General is the fountain of justice and is vested with the power of pardon. In the exercise of such a prerogative, he is to consult, like the English King, either a responsible minister or the Privy Council.

Governor-General's real position.

Theoretically there is no sphere of administration where the constitutionally created mystic hand of the Governor-General is not to be found. Legally, his authority is all embracing in executive, legislative and judicial branches

of the administration. But in reality, through the process of slow and gradual evolution of self-government, parliamentary institutions have come to be established in Canada. All the powers of the Governor-General, accordingly, have become nominal. Lord Bying's episode finished once for all the controversy and conflict of opinion as to the powers of the Governor-General. It was also distinctly laid down in the Imperial Conference in 1936 that the Canadian Governor General occupied the same position in relation to the Dominion Government as the King does in respect to the Government in England. All the actions of the Governor-General, like those of the King are in reality the actions of the ministers. Even the influence of the Canadian Governor-General is not so great as that of the English King. There is no halo round his personality. There is not perpetuity of office and, therefore, no solemnity attached to it. He must migrate to England or to the ranks of an ordinary citizen, if a Canadian after the lapse of five years and, accordingly, he neither sets fashion nor morals for the people, nor does he head the society. Nor does he wield any "unifying, dignifying and stabilising influence."

Q. 5, Critically examine the position and functions of the Cabinet in Canada. (Agra 1939)

Ans. Like England, Canada has a large number of constitutional conventions and in both the countries there is a surprising difference in theory and practice. According to law the Governor-General in Canada, as a representative of the Dominion Crown, is to carry on the administration of the country by a Council of Ministers chosen by him and who remains in office during his pleasure. The actual practice is that the Governor-General occupies the position of a constitutional executive head and the real power of administration is exercised by an Executive Council, the Dominion Cabinet with a Prime Minister as its head. The Prime Minister is the leader of the majority in the House of Commons and he selects his colleagues from his own party alone. But while making the selection the

Prime Minister in Canada must be careful to give representation in the Cabinet to all the Provinces and diverse interests. A Prime Minister may often find himself forced to select a colleague on account of his race, or religion or province in preference to another who is far abler and efficient. In spite of the obvious inconvenience of this system, it has now become a usage. It would be almost as unconstitutional from a single Province or a single section of the Dominion, as it would be to remain in office after a censure in the House of Commons. "The Federal Cabinet is a compromise, a blending." The amazing thing is the high degree of success achieved.

Cabinet system in Canada works on the same lines as it does in England. The Cabinet is responsible to the House of Commons and must resign if the House passes a motion of no-confidence or fails to support its policy. But the Prime Minister, as it is in England, but unlike France, may request the Governor-General to dissolve the House of Commons and to hold a general election to ascertain the public opinion. Formerly, such requests for dissolution were sometimes refused as it happened in 1858 and 1860. But in 1926, the famous Lord Bying episode has now finally decided that the Governor-General would never refuse a dissolution when asked by the Prime Minister.

As in England the responsibility of the Cabinet to the House of Commons is both collective and individual. Cabinet is a homogeneous team and it must work in union to ensure team work. A minister who does not agree with the policy of the Cabinet is required to resign. The minister who resigns "has the privilege of explaining his resignation in Parliament, and his first statement must be made there so that the Premier can reply. The Governor-General's permission is necessary for exercising the privilege, as proceeding in the Cabinet cannot be made public without his leave first being obtained, but such permission is never refused."

In England the Ministry must resign if defeated in the Parliament, with an option to appeal to the electorate.

In Canada this is not so rigidly followed. The Ministry may not resign if it considers that the defeat had been the result of a snap vote.

Secrecy of the deliberations of the Cabinet meetings is one of the virtues of a Cabinet form of Government. Canada followed this maxim like England. But when the Lloyd George Government decided to have a Cabinet Secretariat in England, Canada followed suit. The Cabinet now possesses a regular Secretariat and a proper record of its proceedings is kept. It does not, however, mean that there is no secrecy of the proceedings. These remain a well guarded secret.

It is a precedent in England from the time of George I that the King does not attend the Cabinet meetings. The Duke of Argyll, Governor-General of Canada from 1878 to 1883, was the first to put this practice in motion and his example has been invariably followed by his successors. "All communications which can be called official come to him through the Cabinet, and all Orders-in-Council are submitted to him personally.

English Cabinet Vs. Canadian Cabinet.

It shall be clear that the Canadian Cabinet resembles the Cabinet in all essential particulars; the exclusion of the Governor-General from its meetings, political homogeneity, joint responsibility to the Parliament. Added to it is the ascendancy of the Prime Minister, because of his position as a leader of the majority party and his power of having the Parliament dissolved. The progress in the relations between the Governor-General and the Cabinet has been almost continuous. "The Governor General, like the King in Britain has always been the central figure in the Government of Canada. His history, like that of his illustrious prototype, has been a steady, unsensational rather reluctant progress from virtual dictatorship to virtual impotence. "And thus the real executive power in Canada has now passed into the hands of a responsible Cabinet which guides the legislature, governs the country and otherwise occupies the same position in Canada as the

British Cabinet does in Great Britain. "He is entitled to receive the full confidence of his ministers when they ask him to act in any official capacity. If confidence does not exist, he can doubtlessly dismiss them : but he would do so with the full knowledge that he would be compelled to find successors who would be prepared to take constitutional responsibility for his action. As a matter of fact, no instance of dismissal exists in the history of federal government in Canada. "Even the appointment of the Governor General, as the constitutional convention now exists, is made by His Majesty in consultation with the Canadian Cabinet with which he is to associate himself as a constitutional head."

Q. 6. Analyse the composition, and discuss the powers of the House of Commons in Canada.

Ans. The legislature of Canada, according to the prescriptions of the North America Act of 1867, consists of two Houses. The House of Commons and the Senate. The House of Commons, like its prototype in Great Britain, is a popular and representative House and, therefore, it is the central figure in the national life of the country.

The members of the House of Commons are elected for a term of five years and they continue in office unless the House is previously dissolved or if the Governor-General thinks that a crisis has arisen and there should be a general appeal to the electorate. But as the position stands today no Governor-General would exercise the prerogative of dissolution without the advice of the Prime Minister.

According to the Representation Act 1947, the strength of the Canadian House of Commons was fixed at 255 members distributed thus : Ontario 83. Quebec 73. Saskatchewan 20, Manitoba 16, Alberta 17, British Columbia 19, Nova Scotia 13, New Brunswick 10, Prince Edward Island 4 and Yukon 1. In 1949 New Foundland also joined the federation and was given seats in the House of Commons, whose strength was thus increased to 263. The original membership (under Act. 37 of the Act,) was

fixed at 161, but Art. 51 provides for readjustment of representation by the Parliament of Canada, after every decennial census subject to these rules; Quebec shall have the fixed number of 65. Each of the other provinces shall have a number which will bear the same proportion to the population of the province as the number 65 bears to the population of Quebec, every fraction above one half being counted as one. In any such readjustment the existing representation of a province would not be reduced unless the proportionate population of the province at the preceding census had during the following census diminished by five or more than five per cent. But in no case the representation of Quebec was ever to be less than 65. At present the total representation of the whole Dominion in the Commons would be determined by dividing the total population of Canada by the quotient obtained by dividing the population of Quebec by the number seventy-three. The following formula makes it still more clear.

$$\text{Strength of the House of Commons} = \frac{\text{Population of Canada}}{\frac{\text{Population of Quebec}}{73}}$$

Calculating thus, the representation in the Canadian House of Commons at present comes to one member for 45,600 persons approximately. At every decennial census, due to increase in population and also due to the other provinces joining the federation there has been an increase in the membership of the House whose present strength is 263. Twenty members form a quorum for the sitting of the House. The House elects its own Speaker who presides over its sitting.

Any British subject may offer himself for election as a member of the House of Commons. No residential qualifications are required. But government contractors and members of provincial legislature are not eligible. The House generally contains merchants, manufacturers, farmers, doctors, lawyers and a few representatives of the labourers. Professors seldom come into the field. Members

are at liberty to address the House either in English or French—both being the official languages in Canada.

Canada has copied England in many of her political institutions. At the opening session of the Parliament there is a speech which may be considered parallel to the "speech from the throne." It outlines the policy which the government desires to pursue, and the legislation which is to become the concern of the Parliament. The speech comes before the House of Commons for discussion on a motion made from the Treasury benches. One of them moves that an "address be presented to His Excellency for the gracious speech which he has been pleased to make to both the Houses of Parliament." After the motion has been seconded it gives an opportunity to the leader of the Opposition to offer his criticism of the policy of the Government. The leader of the party in power gives his own explanation for such a policy.

Theoretically, both the House of Commons and the Senate have co-equal powers. But with the stabilisation of the Parliamentary Government the House of Commons has become the pivot of all legislation and the Senate is lost in oblivion. Bills may be introduced in either House. But bills imposing any charge on the people or making any grant for the services must originate in the House of Commons. The rule of procedure lays down that "all aids and supplies granted to His Majesty by the Parliament of Canada are the sole gift of the House of Commons; and all bills for granting such aids and supplies ought to begin with the House to direct, limit, and appoint in all such bills the ends, purposes, considerations, conditions, limitations and qualifications of such grants, which are not alterable by the Senate. Furthermore, all Money Bills must be introduced by the ministry, and the private members like England are debarred from doing so.

The procedure for the passage of the bill is exactly identical with that of the House of Commons in England. A Bill must pass through three readings and cover five stages. A bill in order to become a law must pass through

both the Houses and receive the assent of the Governor-General. The Governor-General may assent to it, veto the same or reserve it for the signification of the King.

A Parliamentary Government must give to the Opposition the opportunity to discuss and criticize all matters of policy. It is a government by criticism. Moreover, the Government, too, is always anxious to place its cards before the House. Therefore, like England, the same process of asking questions, supplementaries, interpellations moving of resolutions and motions for adjournment, want of confidence etc. are in vogue in Canada as well.

Q. 7 Describe the composition organization and working of the Canadian Senate.

(Punjab 1936 ; Agra 1932, 1939).

Ans. Composition of the Senate.

The Senate, or the upper house, consists of, at present 102 members distributed thus : Ontario 24, Quebec 24, the Maritime Provinces 24 (Nova Scotia 10, New Brunswick 10 and Prince Edward Island 4), and the fourth group of four provinces 24 (six each province), and New Foundland (that joined the federation on 31st March 1949). 6. The Canadians desired to follow the British model but as hereditary membership (like that in the English House of Lords) could not be arranged, Senators are appointed for life by the Governor-General on the recommendation of the Cabinet. Therefore, vacancies that occur in the Senate are naturally given by the Cabinet to the old persons who have served the political party to which the Cabinet belongs. For this reason, the Senate is sometimes derided as the bribery found in the possession of the Cabinet.

Qualifications of Senators.

Another undemocratic feature of the Canadian Senate is the high qualification for its membership. Art. 23 lays down the qualifications for a Senator. He should be of

the full age of thirty years. He should be either a natural-born subject of the British Sovereign or a naturalised citizen under law of British Parliament or of any of the Canadian legislatures. He must possess free-hold and unencumbered property of the value of four thousand dollars. He must be a resident of the province for which he is appointed. In the case of Quebec he must be a resident of the electoral district for which he is appointed.

Nominees of the Governor-General.

In case of vacancy by death, resignation or otherwise of a Senator, the Governor-General proceeds to appoint his successor. The Governor-General has also the right to be exercised in the name of the King, to nominate four to eight additional Senators to the Senate to solve a deadlock between the two chambers. A Senator loses his seat if he is absent from two consecutive sessions of the Senate, if he takes an oath of allegiance to a foreign power, if he is convicted of treason or felony, if he is declared bankrupt, or if he ceases to hold the necessary property qualification.

The Governor-General appoints a Senator to be the Speaker of the Senate and may remove him and appoint another. At least fifteen Senators form a quorum. The Speaker always has a vote, but in case of equality of votes the decision is considered to be in the negative. The Senate is largely a revising chamber and has undoubtedly failed to be the sheet-anchor of provincial interests.

Organization and working of the Senate.

The rules of legislative procedure in the Canadian Parliament closely follow those in the parent body, viz, the British Parliament. It is in both countries, the lower house which is the real political battle-field where the fate of the ministry is decided. "The House of Commons is the busiest painter of constitutional issues in Canada, and it is a rare session that does not leave behind some addition to the Gallery of the Political Science a new sketch of the Governor-Generalship, a retouching of an

old view of Civil Service reform, a futuristic attempt to give effect to the members conception of the foreign relations of the Empire—the walls are fast being filled with such efforts". The House of Commons and the Senate enjoy equal legislative powers but money bills must originate in the House. In cases of a deadlock between the two, the Governor-General may add to the Senate four or eight members, one or two from each province or group of provinces. When a legislative measure has passed through both Chambers, it must receive the Governor-General's assent before being placed on the statute book. In practice, this assent is never refused. And the Canadian Parliament has now full powers of legislating for the needs of that great dominion, including the power to amend the constitution.

Q. 8. Discuss the nature and organization of the political parties in Canada.

Ans. The fathers of the Canadian Constitution borrowed both from England and America for the making of their governmental machinery. The parliament form of Government was retained for two obvious reasons. It was an inheritance from the mother country and the result of Canadian constitutional development and traditions. The Federal system of Government, though not in essence akin to that of the United States, was adopted as that alone could solve the insoluble problems of the country. The question of pick and choose was in accordance with the expediency of the circumstances and conditions. The authors of the Constitution did not hesitate even in copying the names of the political institutions of both the countries e. g., the House of Commons and the Senate which constitute the central legislature of Canada.

The parliamentary system of Government is a prelude to the necessity of the political parties. Herein again, the Canadian statesmen adopted, in the very early days of the federation, the party system of the mother country and named their own parties as Conservatives and Libe-

erals. In Canada, however, the main items in the party programmes have been included by "a sheer chance of the cards." Thus the Conservatives became Protectionists and the Liberals opposed the protectionist policy. Chance has, therefore, played an important part in the Canadian politics to divide the parties. It is peculiar, says Lord Bryce that "in a country inhabited by two races of a different language and religion. These differences have not accounted for the division of the parties. It goes to the credit of that country that the parties are not divided horizontally and vertically". Religion and communalism, as such, does not play any part. If these tendencies would have developed in Canada, she would have faced the same problems which today confront India.

The most important characteristics of the political parties in Canada are :—firstly, there is no strict and clear cut line of demarcation between the two major parties. Each commands allegiance from people in different walks of life. "The rich and the less rich—for one can hardly talk of the poor—the farmers, merchants, manufactures, shopkeepers, professional men, have been found in both parties." The Canadian party system therefore, is not based on any ideology. It is the result of chance. Accident of birth also determines the affiliation to a particular party. "Men grow up boyhood identifying themselves with their party and regarding its fortune as their own. Attachment to leaders of such striking gifts and long careers, as were Sir John MacDonal and Sir W. Laurier, created a personal loyalty which exposed a man to reproach as a deserter, when he voted against his party." The party feelings do not introduce bitterness in society.

It is only during the last twenty-five years that the political parties in Canada have acquired a very great prominence, partly, due to the advent of the Labour party and partly to the organization of the farmers into a political body with definite objects. Following are the aims of the different parties :—

1. **The Farmers' Parties** The programme of this party includes, *inter alia* permanent peace in the world, opposition to Imperial control and insistence on equal partnership in the Commonwealth, exploitation and development of natural resources, particularly agriculture, increase in national revenue by imposing a direct tax on unimproved land values, relief of the unemployed, discontinuance of conferment of titles, reform of the Senate, introduction of referendum, initiative and recall. The party has been successful in having some of the reforms introduced and brought on the statute book.

2. **Labour Party.** The Labour Party as everywhere else places "human needs" above "property rights" as its basic programme. It advocates nationalisation of natural resources, State ownership of the public utility services and large scale industries, nationalisation of banking system, social insurance, provision for the unemployed, repeal of the Immigration Act, removal of taxes from necessities of life, abolition of the Senate etc.

3. **Liberal Party.** The Liberal Party stands for low tariffs and advocates the policy of *laissez faire* in the economic life of the people. It is a champion of the sovereign status of Canada in the British Empire. It is not so devoutly adherent to concluding trade agreements with the members of the British Commonwealth of nations only, but advocates entering into such agreements with foreign countries as well.

4. **Conservative Party.** It is mainly a protectionist party. It was responsible for the Ottawa Agreement and conclusion of the trade agreements on the basis of reciprocity. It advocates state interference in the economic life of the country and has put forward programme which includes schemes of social insurance, abolition of child labour, fixing of minimum wages and maximum hours of work.

It is significant to note that the programme of the Conservatives and the Liberals are rather halting. Though they have much in common, their differences

relate to tariffs, policy towards labour and other minor points. One advocates economic nationalism, and the other political nationalism. But when closely examined economic nationalism and political nationalism are twin-sisters with very little difference.

The organization of the political parties in Canada is also on the English model. The parties have their branches in different localities and provinces which are the intermediate units between the constituency and the federation. The party leader is chosen by the convention and it is the convention which also chalks out the programme. In Canada there is an increasing tendency to accept local men as candidates. Still the leaders of the political parties maintain sufficient control over the party machinery.

Constitution of the U.S.S.R.

CONSTITUTION OF THE U. S. S. R.

✓ Q. 1. Describe the main features of the Constitution of Russia as adopted in 1936.

Ans. The modern constitution of the U.S.S.R. is a challenging document arranged in 13 chapters and 146 articles in all. This Constitution emerged out as a result of the economic and social overhauling in the vast country of Russia which was gradually brought about by the "five year plan" launched in 1928 and successively renewed later on. Collectivism and Socialism soon became to be the living ideals of the country and agriculture and industry were all socialized at rather a rapid space. Internal disorders were of late ruled out, and the U.S.S.R. realised more and more the importance of the equality of men and the usefulness of machines. Universal and equal suffrage with direct election of all soviets by secret ballot were among the new conditions which the 1936 Constitution of 1936 aimed to bring about.

1. A toilers' and peasants' state.

In its first chapter, the Constitution establishes "a socialist state of workers and peasants" centralising all powers to "the working people of town and country as represented by soviets of working people's deputies." Following the Marx's theory, the constitution aims at the liquidation of the bourgeoisie, ending of capitalism and the removal of such elements which necessitate political institutions in a society. They aim at the withering away of the State. The constitution abolishes all class-distinctions and brings into being a toilers' state. "All power in the U.S.S.R. belongs to the toilers of the city and village." The State-ownership of everything is the key-word of the new constitution which provides that

"Socialists ownership has been defined to be one of either state-ownership or cooperative farm ownership. All land, minerals, forests, mills, factories, mines, rail roads, water and air transport and all undertakings and institutions are declared to be State property, *i.e.*, "the property of the whole people."

2. Its shadowy federalism.

The Constitution sets up a system of federalism, the communist party organisation has made the Russian Government, a one party Government with the result that the Russian Government has become more unitary than federal in character. It may sound a paradox: yet like every other paradox, it is also true. In theory all the constituent units enjoy the greatest freedom in the management of their own affairs. They are supposed to be free in playing their due role in the conduct of state administration. But the fact is otherwise. The central authorities in the Government make it impossible for the smaller units to work independently even in their own spheres. The local units, thus work only according to the dictates of the "elders". The U.S.S.R. thus is only a federation in name.

3. Its written and rigid character.

The new Constitution of Russia like every other federal constitution of the world is both written and rigid. U. S. S. R., however, only enjoys a flexible rigidity. The process of amendment of the Russian Constitution has always been easy and elastic. The Constitution of 1936 had however, made the process of amendment slightly rigid. Now in place of a single majority vote, two thirds vote of both the Chambers of the Supreme Council is required to bring about an amendment.

4. The so called embodiment of the principle of equality.

The communist strongly hold that their constitution is based on the principle of equality. Their constitution does not perpetuate the distinction between master and

slave, employer and the employed. It gives every one equal voice in matters of administration. It is with this end in view that every adult whether female or male is granted the right to vote.

In spite of all such high sounding propagation of equality, there is however, enough of disparity in the actual practice in the Russian system. Even in routine matters like the management of a shop or an office and other everyday business there exists a clear distinction of ranks and everybody does not receive the same wages for his labour.

5. The Parliamentary pattern.

The Constitution of 1936 is parliamentary in character. Under it, the executive is taken from and responsible to the legislature. The legislative power of the Union vests in the Supreme Soviet and the executive and administrative authority rests in the Council of People's Commissars. The Council of People's Commissars is to be appointed by the Supreme Soviet and the former is to remain responsible to the latter. Here the Russian system approximates to the British parliamentary practice.

6. The Co-ordinate bicameralism.

The new Constitution of Russia introduces bicameral in place of the old unicameral system of legislatures. All-union congress has been replaced by the new Supreme Soviet constituted on the bicameral principle. These modifications bring the Soviet system nearer to the British and the American system. They signify that the Soviet system now recognises that it is man as a citizen which counts, under democracy and not man as a producer. The Council of the Union is the popular chamber directly elected by the citizens. The Union territory is divided into electoral districts, and the representative is chosen for every 300,000 of population. Every citizen, save the insane and other persons condemned by court who has attained the age of eighteen can take part in the election of the deputies and is eligible himself or herself to be

elected. Direct election and secret ballot have been the improvements in the new Constitution over the past one. The usual life of the Council is four years. The upper Chamber is called the Council (Soviet) of Nationalities which is also a directly elected body with a normal term of four years. Unlike the popular chamber's election, the territorial constituencies form the basis of representation in the Upper House. Both the houses enjoy co-equal powers.

7. A charter of rights and duties.

Stalin's Constitution of 1936 also recognises a scheme of Fundamental Rights guaranteed to every citizen of the Union. This feature, which was absent in all the previous constitutions of Russia, is unique in itself. The declaration of Fundamental Rights which, to be sure, entails the corresponding obligations on the part of the citizens, sets the people of Russia on an entirely new and democratic footing. The first headway towards such a system of Rights is made in the declaration of equality to women with men in all fields irrespective of any nationality and race. Specifically the rights include those of (1) employment with due compensation, (2) rest or leisure obtainable by shortening the day to 7 working hours, (3) old age, disability and sickness insurance, (4) free—, elementary and higher education, (5) freedom of conscience and worship and of "anti-religious propaganda, (6) freedom of speech, press, and assemblage, (7) freedom to form association and trade unions etc., (8) inviolability of person and home and the secrecy of correspondence, (9) protection of socialized property and also of the private property (*e. g.* residence, tools, motor cars etc.) so long as it is not used as a means of exploiting the labour class people.

Rights entail duties which include:—(1) to respect and observe the constitution and "carry out" the laws, (2) to fulfil social duties and maintain labour discipline and to respect the rules of the socialist community, (3) to safeguard socialized property, (4) to work according

to the dogma. "He who does not work shall not eat," and (5) lastly to serve under martial-discipline in the Red Army. Thus the Russian constitution of 1936 is a charter of rights and duties.

8. Party dictatorship.

The most significant feature of the new constitution is the practice of party dictatorship in Russia. On paper everything under the Russian regime seems to be ideal and attractive, but if any where there has been a colossal misunderstanding about the theory and practice of Government it is in the Union of Russia, Stalin, claims that "the Constitution of the U. S. S. R. is the only thoroughly democratic constitution of the world", and asserts that while in the capitalistic countries having class-distinctions, democracy exists only for the strong and propertied class of people, while in the U. S. S. R. it exists for all. The factory-child, the School-teacher, the manager of a big concern, all are placed on equal footing. The employer and the employed are at par.

All such claims, which the U. S. S. R, make a show of, in reality are too tall to be real and practical. In fact, the discipline of the communal party is so rigid that the individual freedom is stifled and the free working of democracy is reduced to a farce. The party in fact rules the executive, and the administration is carried on only by those who are the party leaders, and their will as in almost all cases the final word. The U. S. S. R. has a "polit-bureau" which in fact exercises the prerogative of directing all the governmental affairs. In Russia only one party i.e. the Communist party is allowed to exist. It can easily be derived that true democracy cannot function there. Stalin himself has said that, "The party openly admits that it guides and gives general direction to the Government." And as Ogg and Zink rightly point out "In point of fact, the party is the Government in all except form, and the communist dictatorship is the dictatorship of the Communist Party....." "The U. S. S. R. is moreover a military state where service of the State under

martial law is compulsory. In such conditions, it may well be imagined how far the individual freedom and democracy have survived in the U. S. S. R.

Q. 2. Critically examine the schemes of Fundamental rights in Russia.

Ans. Under Stalin's new Constitution of 1936 "the most important innovation is, writes Sidney Webb, the enshrinement in the constitution of a new set of the "rights of man". The earlier constitution of 1918 and 1924 had no charter of fundamental rights and duties. The present constitution specifies the following rights and obligations of the citizens :—

(i) It recognize the right of the citizens to work. It not only recognises it, but what is more important, it ensures it through the socialist organization of industry and the steady growth of productive forces of the Soviet Society.

(ii) The citizens are given the right to rest and leisure. This right again is not only recognised, it is also ensured by the reduction of the working day to seven hours for an over-whelming majority of workers, the establishment of annual vacations with pay for workers and employees etc.

(iii) The citizens also enjoy the right to material security in old age and in case of sickness and loss of capacity to work. This right is ensured by schemes of social insurances at the expense of the State, free medical aid etc.

(iv) Citizens also have the right to education. This is ensured by free and compulsory elementary education, system of state stipends for a large proportion of students and organization of free industrial, technical education for those who work in factories, State farms, tractor stations and collective farms.

(v) The new Constitution also guarantees to all citizens freedom of speech of the press, of assembly and meet-

ings and of street processions and demonstrations. These rights are ensured by placing at the disposal of the working people and their organizations, printing presses, stocks of papers, public buildings, communication facilities etc.

(vi) The citizens in Russia are also guaranteed the right to organize themselves into trade unions, co-operative societies, cultural and scientific societies.

(vii) The Constitution guarantees inviolability of the person and of the homes of citizens. It, however, prescribes universal military service.

(viii) The citizens are also assured the right of equality in all sphere of life, economic, cultural, social and political, irrespective of their nationality or race. As a result of the new social organization, luxury for the military and poverty of the majority have been abolished. Any direct or indirect restriction upon this right to equality is punishable under the law. Women are accorded equal rights with men in all spheres.

(ix) The Constitution also recognises the right of women to fulfil the functions of motherhood with an possible alleviation of the physical suffering involved without pecuniary sacrifice or burden and further aided by universally organized provisions for the care of infants and children.

(x) The citizens also enjoy, above all, the right to full provision according to need, in all the vicissitude of life.

(xi) The Constitution also recognises freedom of religious and anti-religious propaganda. The Constitution grants freedom of performing religious rites to those, who believe in any religion and the right of carrying on anti-religious propaganda to those, who have no faith in religions.

Obligations of Soviet Citizens.

Rights, however, carry with them corresponding duties. By the Constitution the following obligations are laid upon the citizens :

- (a) to observe the constitution and carry out the laws
- (b) to maintain labour discipline ;
- (c) to fulfill ones social duties ;
- (d) to respect the rules of the socialist community ;
- (e) to safe-guard socialized property ;
- (f) to work according to the principle. "He, who does not work shall not eat," and
- (g) to serve, under the universal military service law in the Red Army.

Main features of the Scheme of Fundamental Rights in Russia.

(i) *Its Universality.* The fundamental rights, as recognised in Russia are to be universal in operation for the Constitution of 1936 starts from the proposition that all nations and races have equal rights. "All these new and unprecedented rights of man", writes Sidney Webb," are guaranteed by the proposed constitution, not merely to a ruling class, a dominant race, or even a specially insured minority, but universally, according to need.....to all citizens in city or village including back-ward peoples of nearly 200 tribes throughout the vast continent."

(ii) *The socialistic foundations.* The new Constitution gives us a new set of the rights of man. The American and the French declarations of Rights were based on individualism ; their aim was to secure to the individual almost unfettered ownership of private property and the right to invest it in the best way he likes. They are, as it were, "sanctifications of the motive of individual profit making". The authors of the New Constitution of Russia

approached the matter from a different angle and in a new spirit. They conceived of the rights of citizens in terms of socialist order in which there is deliberately planned production for community's consumption at authoritatively fixed retail prices. This is why the Soviet scheme of Rights gives the first place to the right to work which is not to be found in any other declaration of the rights of Man.

(iii) *A scheme of ends with means.* Another distinguishing feature of the Soviet treatment of the rights of man is that it does not content itself with a bare enumeration of rights, but also stresses the means by which they can be exercised. For example, it does not merely proclaim the right to work, but ensures it by the socialist organization of national economy, the steady growth of the productive forces of the community and the abolition of unemployment.

(iv) *A scheme of rights with duties.* The new Constitution speaks not only of the rights of citizens, but also of their duties. For example, corresponding to the right of work, there is the duty to produce. Work is regarded as an obligation and an honourable duty for every able bodied citizen. "He who does not work, neither shall he eat" is the guiding principle underlying the Soviet economy.

(v) *Unreality of the rights.* Many of the aforesaid rights are, however, absolutely unreal. The Government owns and operates all newspapers, printing presses, public houses, schools, radio stations, theatres, concert halls, museums and other centres of art and culture. A person cannot express in print the views which are opposed by the Communist party. He has no means at his command to make known his views to the public. According to Andre Gide, "in no country of the world is thought less free." The right of association is granted only to professional or social groups which have the Government's approval. Attempts to form non-communist political organizations or even independent communist factions are promptly suppressed. The expression of unorthodox political or

economic views is barred in schools and Universities. Freedom of movement also is severely restricted. Travel abroad, except on Government mission is prohibited. A person has to take 'Home passport' even for travelling within the country, according to the decree of December 27, 1932. Absence from home even for 24 hours has to be reported. The workers are not allowed to strike. It may be argued that workers themselves control the State and as such there is no meaning in declaring a strike. But the State is really controlled by the Communist party and not by the general body of electors or workers. Non-party people may stand for elections, but they have got no chance of being elected or even contesting an election, if the local communist organization does not support them. Public contest for seats in the Soviet legislature was avoided in the election of 1938. Above all the power of State Secret Police (G. P. U.) over the life and death of Soviet citizens "without the necessity of complying with the formalities of legal procedure" make all the rights of citizens meaningless.

Q. 3. (i) Explain clearly in what respects Stalin's Constitution of 1936 is an improvement on previous Constitutions of Russia ;

(ii) "The Constitution of U. S. S. R. is the only Democratic Constitution in the world", thoroughly explain and discuss. (Agra 1951).

Ans. Soviet State whether a democratic State or not.

One of the most important questions discussed about Soviet Russia is whether or not it is democratic. Political thinkers are divided in their opinions upon the issue. One may dispute the view that the Soviet Constitution of 1936 is purely democratic, yet it cannot be denied that it is more democratic than the constitution of 1918 and 1924.

While framing the Constitution of 1918, the revolutionists aimed at not at a parliamentary republic, but at a republic, of the Soviet of workers, agricultural labourers and peasants deputies. Lenin identified this Soviet system with the

dictatorship of the proletariat. But this dictatorship was the extreme opposite of parliamentarism. The former is a rule-won and maintained by violence and unrestricted by any laws; the latter is government by agreement and rational persuasion and is characterised by rule of law. Little wonder, then, that the Soviet system under the constitutions of 1918 and 1924 had many anti-democratic features. Franchise was denied to the bourgeoisie. Whatever was found necessary for the suppression of the exploiting class and the placing of power in the hands of the labouring masses was adopted. Indirect elections were introduced at all levels except the lowest and all elections were by open ballot. The working population was organised not into territorial divisions but into productive units; such as factories, plants, enterprises and mines. The Soviet system thus "substituted collective body in the form of productive nuclei, State institutions and enterprises and professional unions for separate individuals as electoral units." The constitution did not recognise the principle of the separation of powers or the doctrine of checks and balances. One of the principles proclaimed by Lenin in 1918 was "the abolition of parliamentarism as characterised by separating the legislative and administrative branches and the fusion of administration with legislation." All this was in direct opposition to the ideas and practices of democracy as developed in countries like Great Britain and the United States. Democracy originated and developed there in the attempt to recognise the rights of individual citizens. The Soviet system on the contrary was absolutely silent on the rights of individuals. It laid emphasis on the collective right of the labouring and exploiting classes, "In the democratic States" writes Mark Vishniak, "representation was based on elections from districts which did not have pronounced political characteristics; the Soviet prided themselves for 22 years on representation not of persons or citizens but of group or institutions which the ruling party recognised as co-operative and useful bodies."

Changes in the Constitution of 1936.

The Constitution introduced the following changes in the constitutional structure of U. S. S. R.

(1) The new Constitution abolished all restrictions on franchise and established universal suffrage. The reason given for this radical change was, "the complete victory of socialist system in all spheres of national economy." Stalin stated that since now there are no exploiters, there is no need of this discrimination. The new Constitution gives every citizen equal rights irrespective of property qualifications national origin etc.

(2) The original system of representation of collective groups on a functional basis was replaced by the traditional method of giving representation to individuals organised into territorial constituencies. According to the new Constitution, members of the supreme Soviet are elected by individuals in Electoral Areas set up on the basis of one deputy for every 300,000 of the population.

(3) The old unicameral all Union Congress was replaced by the new Supreme Soviet Constituted on the bicameral principle. These modifications bring the Soviet system nearer to the British and the American. They signify that the Soviet system now recognises that it is man as citizen which counts under democracy and not man as a producer.

(4) Indirect elections and open ballot were entirely given up. Instead, direct elections at all levels and secret ballot were instituted.

(5) The Constitution of 1936 recognised the principle of separation of powers with the aid of a parliamentary form of government. It vested the legislative powers of the Union in the Supreme Soviet and the Executive and Administrative authority in the Council of People's Commissars by vesting the appointment of the Council of People's Commissars in the Supreme Soviet and making

the former responsible to the latter—the system approximates to the British practice.

(6) In some respects the new Constitution can be regarded as more democratic than even the British or the French system. The Soviet of Nationalities, which is the second chamber of the Supreme Soviet is elected directly by the citizens and enjoys absolutely equal powers with the Soviet of the Union. The same cannot be said either of the British House of Lords or the French Senate. Not only this, the Constitution also established perfect racial equality. It refused absolutely to recognise race as the disqualification for the right to vote, the right to hold office or the right to be elected to any representative body.

(7) The Constitution also recognises a system of the fundamental rights of citizens and also tries to ensure their exercise. While explaining the specific features of the draft of the new Constitution, Stalin divided bourgeois Constitution into two broad classes. One class openly denies or actually nullifies the equality of rights of citizens and democratic liberties. The other class accepts the principle of equality but makes reservations and provides for restrictions which greatly mutilate these democratic rights, and liberties. For his own draft he claimed that it was free from such reservations and restrictions. "For it there exists no division of citizens into active and passive ones, for it all citizens are active. It does not recognise any difference between men and women, residents and non-residents, propertied and propertyless, educated and uneducated. For it all citizens have equal rights."

The Constitution of 1936 describes the Communist party as an "organisation of the most active and politically conscious citizens," and its branches as the "leading nucleus of all organisations, both social and political." The Communist Party is empowered by article 141 of the Constitution to "nominate candidates for elective assemblies." The Trade Union cooperative societies, youth organisations and cultural societies have indeed also got the right of putting forward candidates indeed. But the

central committee of the Communist party issued an appeal before the election of 1930 for a demonstration of national unity by avoiding all contests in the election. The result was that of the total membership of 569 in the Council of Union 81% were elected from the Communist party and of the 574 members in the Council of Nationalities 71 percent were drawn from the ranks of the party. The membership of the Communist Party, it is interesting to note is about 5 per cent of the total electorate. The remaining 95% of voters are in fact without political rights as they have no alternative but to vote for candidates nominated or supported by the Communist Party. Again if the essence of political democracy lies in the right to hold and express freely views that do not agree with those of the group in power, there is no democracy in U.S.S.R. The one party State is in reality the very antithesis of political democracy.

Not only this, Russia maintains the dictatorship of the working class even under the new constitution. Enforcement of individual rights is subordinated to the needs of the Dictatorship. Consequently, the freedom of speech and thought suffer very much. This point can well be illustrated with one reference. In England and the U. S. A., a Communist minded critic of the social and political and economic order can get an audience to propagate his views. But no anti-communistic propaganda is permissible in U.S.S.R. Thus it is obvious that democracy if it is a charter of rights and liberties to the people does not exist in Russia in the current sense. At best the Russian democracy is of the few and not of the many.

Q. 4. Give an account of the organisation and position of the Communist party in Russia.

Ans. Democracy and one party system.

It is difficult to assess the working of democracy in a country where only one party is permitted to exist at the cost of others. In fact, "political party" as understood in U. S. A., U. K. India and other bi-party or multi-

party countries, has no such meaning and existence in the Union of Russia where the only one party, the communist party, is allowed to survive and dominate affairs, national and international. Of course, there is no legal bar for the organisation of other parties but the truth goes that no other party, except the communist party has had any legal recognition, and hence enjoys actual existence. It has been remarked that there might be other parties in Russia but, "on the sole condition that one is in power and the other in jail." Article 126 specifically lays down that "The most active and politically conscious citizens in the ranks of the working class and other strata of toilers unite in the Communist party of the U. S. S. R. which is the vanguard of the toilers in their struggle to strengthen the socialist system and which represents the leading core of all organisations both public and state". Thus it will be observed that under such serious limitations, the democracy in Russia is only at the best the democracy of the few. It is indeed one-party dictatorship for the masses. Freedom of thought and expression are only phrases, on the paper. In practice however anything expressed or demonstrated against the communist party is a serious offence approximating to treason.

Organisation of the Communist party.

The Communist party in Russia is a cautiously organised and highly integrated system whose membership is restricted to only a fraction of the total population of the country. The party has on its role about 6,500,000 members out of a total national population of 200,000,000. Thus the party which has only 3.15% membership and which rules over the remaining 97% of the population, cannot claim to be working democratically, howsoever high the leaders of the party may sing their own ideals. Mass admission to the party being rare, it is kept purposely a small and compact body in order to enable exacting standards to be maintained and rigid discipline enforced. Lenin himself held that, "Reduce the membership and you strengthen the party." The admission to the party is strictly on individual basis and the path leading to the

entrance of the party is difficult and thorny. The policy of the party has been to keep the requirements for admission so high that few people may be able to fulfil them. Every one is not entitled even to apply for party-membership, and priests, speculators, private merchants, and "kulaks" (farmers resisting collective farming of their land) are specifically excluded from being even the applicants for party-membership. Filled with a burning zeal and courage, a person in order to become a member of the party will first have to secure recommendation from three or four persons who are already the members of a good standing, and then he would apply to a local branch of the party which holds a searching enquiry into his qualifications and eligibility. Thereafter if his candidature is ultimately accepted he becomes-and remains for a period ranging from one to five years-a "Candidate" or a "probationer" and finally passes to the status of a full-fledged member, if, after rigorous examination he is found to be sincere in his communist faith, fully emptied of any "bourgeois mentality", purged of his selfish or ulterior motives, and finally passed of good moral character and fully conscious of his obligations and duties towards the party. The members of sponsors, the duration of membership of these sponsors, the period of probation assigned to the applicant, all these things vary with the varying status and occupation of the applicant. The manual labourers and toilers find a preponderance in matters of membership to the party. The applicants who have been the workers in factories and mines for five years are regarded to possess the most favourable mentality for being the members of the party, and hence the conditions for their entrance in the party are lax-they need only two sponsors each with one year's standing in the party and are kept on probation for only one year. Others of a comparatively higher strata like Collective farmers, small crafts men and primary school-teachers, though usually of peasant antecedents, need have at least five sponsors with five years standing and are expected to be kept on probation for a period of two years. The Civil Servants, intellectuals; members of higher profession, and others "white Collar", and "stiffnecked"

persons who are supposed to continue with a bourgeois mentality, are taken on the party rolls with the greatest precaution-needing five sponsors with at least ten years standing and are kept on probation for a period of five years. In all, the working class is given the top priority in matters of party membership. Women are given proportion of about 20 in the party.

Duties and obligations of members.

The membership of the party carries with itself certain well-defined duties and obligations. The party subjects its members to a very rigorous system of discipline and it has been expressly declared that the party is a "a unified militant organisation held together by conscious 'iron proletarian discipline.'" A member is registered both locally and centrally and his membership card carries a list of all obligations which he has to fulfil in all rigour. Summarily the obligations include: (1) a payment of admission fee and afterwards regular monthly contributions from his personal earnings to support the party; (2) must steadfastly adhere to the "party line" of policy and action, and carry out without "ifs and buts" the orders and instructions emanating from the party. He must regard that his talents and time are no longer his own, but his ALL self is FOR the party, irrespective of all the dangers and hazards, that may come; (3) must take an active part in the life of the party and must not only remain a passive well-wisher or an idle believer; (4) "Work untiringly to raise his ideological equipment, to master the principles of Marxism, Leninism and the important political and organisational decisions of the party, and to explain these to non-party masses;" (5) "set an example in the observance of labour and State discipline, master the technique of his work and continually raise his production and work qualifications"; (6) must abstain from profit-making trade. In short, the membership entails a life of a high degree of self-denial and party worship. The party members, however, enjoy some benefits over other non-party men such as preference in getting a job, a promotive admission to

rest-homes and hospitals and the like. But party-rigour and party-service are to be given top-priority. Their rights spring from their duties, failing the discharge of which the members are liable to the severest disciplinary action.

The party organs.

With a hierachical set up, the party is organised into three main "units" which in the descending order may be classified as under :— (1) The All-Union Congress, (2) The Central Committee, (3) Primary Party organs or the "cells."

The All-Union Congress :—

It is a sufficiently large body supposedly lodged with the final authority in the party and is therefore, the most important wing of the Communist party. As laid down in rules, the All Union Congress is convened at least once every three years. Being at the top of the elective bodies, this Congress is the supreme organ of the party and has the power of revising the party programme and approving reports of other All-Union party organs. It has on its role approximately 2000 delegates, and "candidates" (alternate delegates) The meetings are held in Moscow with a great pomp and show to excite popular interest. During its sessions, it reviews the past failures and achievements and lays down a general policy of action as future programme.

The Central Committee :

This is a compact body of a comparatively small size than its parent body, the Congress, and is made up of 71 members and "candidates" or alternate delegates. All being chosen (of course, formally) by secret ballot of the Congress itself. The Committee meets oftener than the Congress, say, from three or four to a dozen times a year. Its sittings are of an executive nature meant to carry out the decisions taken by the All Union Congress, and some times doing so on its own initiative. The Central Committee, therefore, weilds, in practice, greater power than

the parent body, the All-Union Congress which meets only too less frequently. But it must not be inferred that it is the only and ultimate source of power—it is rather large for really acting efficiently, hence it delegates its authority in the most part to its officers and sub-committees. It has two sub-committees, one named “Politbureau” and the other “Orgbureau.” The Political bureau or briefly “Politbureau” is of greatest importance and weilds even greater power than its parent body, the General Committee. It is in fact the only organ which overshadows all others.

(a) *The “Politbureau”.* The “Politbureau” may rightly be called the main-spring of the Soviet system of administration, and the nerve-centre of the Communist party organisation. It is a small body composed of top leaders and the exact number of its members varies from time to time according to the rise or decay of vigorous personalities. Its membership was confined to five members in 1919. Later on its membership rose as high as ten with two to eight “candidates” or the “alternates.” Only the best-ried and deep rooted Communist heads are enrolled the members of the “Politbureau”. Joseph Stalin is one of the members of the party and also the Chairman of this body. Just as the Central Committee acts when the All Union is not acting, so also the Political bureau—the inner-circle of the Central Committee—acts when its parent body does not meet. In fact, this body is the supreme custodian of all authority. It meets several times a week. All matters particularly of political concern are referred to this body for decision. Matters, economic, social international, or internal, all in the last analysis acquire a political colour and hence the “Polit bureau” has its vital hand over almost every field of state-action. The various ministries and other agencies like the State Planning Commission, all refer their actions to the “Polit bureau” and consequently are subordinate to it. The only exception is that concerning foreign affairs, but here too, due to much confusion prevailing in the Soviet system the “Politbureau” pokes its powerful nose. To be sure, a

study of the soviet system of Government would be meaningless unless careful attention is given to and a critical examination made of this supreme and all-powerful organ of the Communist party.

(b) *The "Orgbureau"*. A comparatively less important, but nevertheless a living body is the other sub-committee of the Central Committee which is known as organisation bureau or briefly "Orgbureau". It has 13 members and seven "alternates", all elected by the Central Committee. It is also composed of very influential members of the party, and sometimes a member may share seats in both the sub-committees. But surely, this body is distinctly inferior and less-important. The main task of "Org Bureau" is regarding the party organisation and its affairs. It supervises the party hierarchy and indulges in propaganda and recruiting. Joseph Stalin is again one of its member. Much of the work of the "Orgbureau" is of such a nature as may be considered by the "Politbureau" and hence this organ is becoming less active more so because of the existence of a Secretariat, consisting of four members, which has tended to assume more and more of the "Org bureau" work.

The Primary Party organs.

The lowest rank in the hierarchy of the party is that of the "Cells" or the Primary party organs each of which is a group of at least three persons of good political standing organised in a factory, mine, store, army regiment, office, school, university, village or a collective farm etc. These basic units were formerly known as "Cells" but now they are called as "Primary Party organs." Their number is about 1,35,000. These primary organs choose delegates and representatives, who constitute the party committee of the town and rural districts. These councils or committees in turn elect the regional or provincial party councils which again choose from amongst themselves the representatives who form the party councils in every constituent republic of the union and from these go the delegates who form the All-Union Congress which is the highest elective body of the party. Thus it may be observed that

the line of responsibility and control is unbroken from top to bottom. The highest can exercise effective control to maintain the rigorous discipline in all the ranks of the party. The party organisation in the U. S. S. R. is, therefore, much akin to the military set up and discipline of a country, social and economic without caring to pursue its ends by Constitutional methods. It had underground operations which created serious difficulties in foreign countries. It was, however, only in 1943 that as a gesture of good will to western countries, Stalin announced its liquidation. A pretended move as it was, the liquidation of the Comintern proved only too temporary, and shortly after the defeat of Germany and Japan, the formation of a new and parallel organisation, known as "Cominform" was announced. The "Cominform" is less elaborate in formal scope, and functions ostensibly as a central bureau or a clearing house of the Communist organisations, but in fact it has the spirit of its predecessor. Its head quarters were initially stationed in Yugoslavia and later on with the Tito rebellion, were moved to Rumania. This shifting of scene, however, did not make any particular alterations. Since it is still Leningrad and Moscow that predominate in its politics.

The Russian Government of course have their own defence against the world criticism—(1) The Soviet Communist party supported financially the Comintern, while the Government did not do it ; (2) Stalin surely held a high office in "Comintern", as the Third International, but so also did the British Socialist Ramsay Macdonald in the second International (which is known to be a socialist world federation, distinguished from the communist). (3) The policy of the Government and that of the "Comintern" were not always the same.

✓ Q. 5. Write short notes on the following to bring out clearly the importance and the working of each ;
 (a) Comintern (b) Supreme Soviet (c) Presidium (d) People's Commissar.

(a) Comintern.

Ans. In 1919, a world organisation of the Communist parties known as the Third International, and frequently referred to as, the "Comintern", was set up which had almost more than 60 countries represented on this Congress to decide the theories and policies of this world wide group. Although, an international organisation, the executive committee and the Central Headquarters of Moscow dominate in practically all the matters. The Communist party of Russia is a constituent body of this big organisation. The Supreme Powers of the organisation vest in a world Congress, but the Communist party of Russia, which is a part of this whole body, in reality has much to do with the programmes and policies of Comintern. Leaders of the Communist party of the U. S. S. R. including Stalin himself, occupied their seats on the executive committee, and indeed having a forceful majority behind themselves, dominate the Comintern.

The main object of the Third International or the Comintern was to spread the creed of Communism all over the world and to overthrow the bourgeoisie and the Capitalistic regimes and to establish in their stead a Soviet Republic as a transitional stage towards the complete withering away of the State. The Comintern had its head quarters at Moscow. The Government of the U. S. S. R. being directed and influenced by the Communist party of Russia, and that Communist party being close in relation with the Comintern, the world observers have raised serious objections regarding the true position of the Comintern and relationship with communist party and the Government of the U. S. S. R. The U. S. S. R. Government was therefore condemned in foreign countries on the ground that it supported an organisation which wanted an over all reconstruction.

(b) Supreme Soviet.

The Supreme Soviet, or the Supreme Council under the constitution of 1936 has taken the place of the old All Russian Congress of Soviet and of the Central executive Committee, and is the highest organ of the state power

in the U. S. S. R. It consists of two Houses, one Council of the Union and the other Council of Nationalities. The members of both, are elected by the direct popular vote, though the formal is the representative due to its being elected on the population basis. The number of the members of the Council of the Union is pretty over 650 while that of the Upper House is approximately 700. This is in apparent contrast with the situation in the U. S. A. and other countries where the Upper House is distinctly smaller than the Lower one. For the election of the Council of the Union, all Russia is divided into districts of approximately 3 lakhs of people and these send representatives approximately 657 in number. The election to the Council of Nationalities is held on a federal basis, distributing all Union in territorial Constituencies—each constituent republic has 25 members, "And each antonomous region 5. Each house has one President and two vice-presidents.

The election to the Supreme Soviet is held every four years, if not earlier dissolved by the Presidium when irreconcilable differences arise between the two houses. The Supreme Council is required by the Constitution to meet at least twice a year. The sessions of the Supreme Soviet are summoned by the Presidium which has the power to call special sessions also besides the two regular ones.

The two Houses enjoy co-equal powers in legislative matters and also in the case of money bills. Any measure except the money bill can be introduced, in either house, and no bill can become a law unless passed by both the houses. Any measure can be passed by a simple majority vote except the amendment of the Constitution which can be effected only after two third vote of the majority. Differences and conflicts of both the Houses are supposed to be reconciled by conference committees, drawn from the membership of both and in cases where the solutions of such committees prove un-

acceptable, the president has the authority to dissolve the Council and summon a new election. The Supreme Soviet shall at a joint sitting elect the members of the Presidium. At any such joint sitting of both the houses, the President of the two houses shall preside by rotation. Similarly the Council of People's Commissars shall be appointed by both the House.

The Supreme Soviet shall have the authority to arrange international representation to conclude treaties to adopt measures of peace and war, to admit some new State in the Union, to exercise command over the armed forces, to preserve security of the States, to carry on foreign trade as a Government monopoly, to frame national economic policies, to supervise transport system to control currency and credit etc. It may also constitute enquiry commissions.

With the broad functions given above, it must not be understood that the Soviet system is wholly democratic, since the politbureau acts and guides the policies of legislature overhead. In a nut shell, it again reduces to a one-party dictatorship.

(c) Presidium.

The Presidium is constituted by the Supreme Council at a joint sitting of both the House. The Presidium consists of 37 persons. It has got a Chairman who occupies a position corresponding to that of President of the Republic. The Presidium is like a standing committee entrusted with the power of exercising the various functions when the Supreme Soviet is not holding its sessions. The Presidium of course cannot pass laws.

The Constitution prescribes certain specific powers of the Presidium in the Government of the U. S. S. R. These powers are:—

- (i) to summon the sessions of the Supreme Soviet and to dissolve the Supreme Soviet, if irreconcilable difference crops up between the two Houses of that body; in the latter case, the Presidium shall order for general election;

- (ii) to conduct referendum on its own responsibility ;
- (iii) to cancel the orders and decisions of any of the people's commissars either of the union or of any of the constituent republics, if such orders and decisions are deemed to be illegal ;
- (iv) to dismiss any commissar or to appoint a new commissar with the concurrence of the Council of People's Commissars, when the Supreme Soviet is not holding its sessions.
- (v) to bestow titles and honours on behalf of the union ;
- (vi) to grant pardons to offenders ;
- (vii) to wage defensive war ;
- (viii) to order partial or general mobilisation ;
- (ix) to ratify treaties with foreign powers ;
- (x) to send ambassadors to foreign countries and to welcome ambassadors from foreign countries or to request recall of foreign ambassadors, and
- (xi) to proclaim martial law in different areas or throughout the union in order to maintain peace, security and order.

(d) Council of People's Commissars.

In spite of the existence of the Presidium, the Council of People's Commissars, constitutes in reality the supreme executive and administrative organ of state power. The Council is selected at a joint sitting of both the Houses of the Supreme Soviet. The number of the members of the council is above 20 ; the Council consists of one President, Vice-President, the Vice Presidents of the Committee on higher education in Arts, the President of the State Bank and other Commissars. The President of the Council of the People's Commissars occupies a position like that of a Prime Minister. The Council is not only selected by the Supreme Soviet but is also responsible to that body. When the Supreme Soviet is not sitting the Council shall tender obedience to the Presidium. It shall give orders

and decisions on all matters according to the circumstances of the country and shall see to the enforcement of these orders. These orders and decisions are applicable throughout the Union and are to be obeyed by all people.

Specifically speaking, the constitution bestows the following powers upon the Council of the People's Commissars :—

- (i) to co-ordinate all kinds of activities, including economic and cultural, of the constituent republics with the works of the various departments of the Union Government ;
- (ii) to transact all necessary business in connection with the framing of the national economic plan, for the budget, and the increasing of the credit of the economic institutions of the country ;
- (iii) to maintain peace and order in the Union, to uphold the interests of the union and to safeguard the rights of the citizens ;
- (iv) to conduct relations with the foreign countries ;
- (v) to raise, control, improve and direct the armed forces of the country, and
- (vi) to create special committees or central departments in connection with economic, cultural and and defence matters, when necessary.

Individually each Commissar directs the activities of some branch of the administration like a minister of a Parliamentary Government. Some of the commissariats or department work in fields in which authority vests in the constituent republic also. These are Union—republic commissariats. These union—republic commissariats function with respect to matters like food industry, timber industry, agriculture, domestic trade, justice, health, state grain and livestock farms etc. For carrying on administration on these matters each constituent republic has got its own commissariats. The function therefore of the

union—republic commissariats is to secure appropriate coordination in the administration as carried on principally by the Commissariats of each Republic. Other commissariats function in fields belonging exclusively to the Union. These are All Union People's Commissariats. They have exclusive jurisdiction in matters like defence, foreign affairs, railways, water transports, communication, foreign trade, civil engineering, cellulose and paper manufacture and certain other heavy industries. With respect to these matters the All—Union Commissariats exercise exclusive authority throughout the Union.

People's Commissars Vs. Parliamentary Cabinets :

There are certain points of similarity between the Council of the People's Commissars in U. S. S. R. and the Cabinet in a Parliamentary Government. The Commissars who are departmental administrators together form a Council like the Cabinet. As the Cabinet in England or France is responsible to the respective Parliaments so in Russia the Council of the People's Commissars is responsible to the Supreme Soviet or Supreme Council as it is popularly known. When the Supreme Council is not sitting, Commissars tender responsibility through the Presidium. This constitutional system is on the face of it largely indistinguishable from the Cabinet system of Government.

But this is so in appearance only. One can be convinced of a close similarity between the Cabinet Government and the Governmental system of the U.S.S.R. when one can persuade oneself to forget the Communist Party. The Commissars are in law, elected by the Supreme Soviet but in fact selected by the Politbureau who ever may be the President of the Council of the People's Commissars (*i. e.* Prime Minister), the real leading figure is the Party's Secretary General. If the English Prime Minister is the Key-stone of the Cabinet arch, his proto type in Russia is at best a show boy—a puppet in the hands of the President of the Communist party.

Constitution of the Indian Republic

CONSTITUTION OF THE INDIAN REPUBLIC

Q. 1. Clearly bring out the main features of the New Constitution of the Indian Republic.

The Constitution of India which came into operation since January 1950 has certain special features. It was not the purpose of our Constitution makers to produce an original or unique Constitution. What they wanted was a good workable one. The New Constitution of India—an infant just out of its nursery—has been called by varying names. Some call it 'a haven of Capitalism', while others go to the extent of emphasizing that it is 'a bag of borrowings'. The American criticism is that the constitution is at best a romance of idealism. It keeps astray of the hard realities of life. Whatever may be the criticism against or praises in favour—ours is a constitution which is a sincere endeavour of the patriots of India to direct the energies of the Nation in noble and progressive channels.

The main features of this constitution may be summarised under the following heads.

- (i) Constitution as a document ;
 - (ii) Constitution in its outstanding features; and
 - (iii) Constitution as a federal scheme.
- (i) **Constitution as a document.**

The New Constitution of India is a written document. It is fairly long and is a detailed constitution. In other states it is generally found that in the Constitution, only the general or broad principles and rules of Governmental organization are incorporated and not the detailed rules and procedure of administration. But, here, in our

constitution, many detailed rules of administration are placed, because of the fact that we are yet infant democrats.

(ii) **Constitution in its outstanding features.**

(a) *A People's democratic Republic.* The 'Preamble' of our Constitution expressly mentions the fact that the constitution emanates from the will of the people—who are sovereign.

Our constitution is Republic in character, as the executive head of India will not be a hereditary monarch, but an elected President. All Governmental authority is derived from the people, and is exercised by a Government consisting of their representatives, elected freely on the basis of adult suffrage. This means not only the right to vote or choose representatives but also the right to hold office and be chosen for it.

(b) *Parliamentary pattern.* Consequently, the executive in India is taken from and is individually and collectively responsible to the popular Legislature in respect of all its decisions and actions. The executive is thus harnessed to the service of the people by the peoples representatives. This, the latter do through their power (i) to enact laws, (ii) to control the purse, (iii) to interpellate and (iv) to criticise the executive on the floor of the House. We are entirely British this way.

(c) *A living concept of a secular welfare state.* A secular state implies a state which is neutral in matters of religion and faith. We know very well how much in the past, our Nation has suffered because of communalism. Under the new constitution, religion is definitely separated from politics. There is no official religion of India. The constitution guarantees freedom of conscience and faith to all, and refrains from enforcing any religion. "The ideal is based on the theory that a secular State deals only with the relations between men and not between men and God.

In addition, our constitution has a peculiar characteristic of its own. It guarantees to all alike—without any discrimination work, employment and justice in terms of a living wage. It ensures to create such conditions wherein morality is possible, enlightenment, may dawn and people may become conscious of their duties and rights. Prior to all superficialities of politics, our constitution guarantees to all alike a full meal. These facts are borne out by a study of the directives of state policy.

(d) *A Constitution with a Political manifesto.* To ensure that India may continue to be a 'Welfare State', it is necessary that there may be a universal programme of action for the State which may serve as a standing political manifesto for all Governments, irrespective of their party colours. Thus we are ensured by the New Constitution—adequate means of livelihood, fair distribution of wealth, equal pay for equal work, raising the level of nutrition, employment etc., etc., in the chapter entitled directives of state policy.

(e) *Our Manga Carta.* "To none will we deny or delay, right or justice....." This is the doctrine of Magna Carta—the great palladium of civil liberty—which is a landmark in English Constitutional history.

Similarly, our Constitution safeguards and ensures to all alike individual liberty in all the spheres—political, economic, social and religious. It is a piece of Reformation. Untouchability becomes a punishable offence. Women enjoy equal right in all matters—communalism has been thrashed and has no place in our daily routine. The Constitution is a living expression of the notion of Liberty, Equality and Fraternity.

(f) *A Republic of Rural Republic.* The ideal of 'Swarajya' is embodied in the spirit of the Constitution which ensures efficient working of the village Panchayats as units of 'Self-Government.' Our Constitution has thus got a popular base and a popular roof—and in fact popular

bricks and mortar as well. Thus independence and self-government begin at the bottom in India to continue right upto the top if a band of selfish rulers do not meddle with it.

(y) *As a custodian of international peace and good will.* Our Constitution is as much pacific and international in outlook as it is secular, democratic and national. This international impress of our Constitution is obvious from the fact that the Indian State shall endeavour "to promote international peace and security, to maintain just and honourable relations between nations, foster respect for international law and treaty obligations in the dealings of organized people with one another and encourage settlement of international disputes by arbitration."

(iii) As a Federation.

Our Constitution is federal in structure. It has all the classic features of a federation. It enjoys the Supremacy of a written and rigid constitution. The distribution of powers between the centre and the component units is clearly marked. A judiciary with all supremacy is also established.

(a) *Its unitary shade.* But the Indian Federation is a Unitary federation. The Indian Constitution represents one of the most elaborate efforts to combine central authority with local autonomy. Consequently, our constitution is more unitary than federal in essence and spirit. It is like a pyramid which begins with a broad federal base and narrows upward to evolve into a singular unitary top. This fact becomes obvious because though our Constitution postulates a dual polity like every other federation, it aims to have uniformity in all basic matters in order to consolidate the Indian Union in the following ways.

Our Constitution does not admit of dual citizenship. We are all Indians in other words. This provision is intended to give predominance to national interests over and above local loyalties.

There is a provision for a single integrated judiciary and uniformity in civil and criminal laws.

Special All India services for recruitment to high posts common to the Union and the States have been provided—e.g., the I. A. S.—the I. P. S. etc.

Our constitution is not a federation with a bias towards the autonomy of the units—keeping in view the remark that normally it is meant to be federal, but in emergencies it can assume a unitary character, when the President can direct the Provincial Governments and assume to himself the provincial authority in case of maladministration.

The residuary powers are vested in the centre. In face of unforeseen national emergencies the centre can lawfully interfere with the administration of the federal units.

(b) *Parliamentary structure.* Though, as a Federation, India bears a nominal similarity with America's constitutional structure, its executive and legislative machinery is essentially British in character. In India if we say the President can do no wrong—it would not be an exaggeration in view of the British Parliamentary maxim—'the king can do no wrong....'

(c) *Flexible Rigidity.* India's Federal Structure is rigid so far as a special machinery has been provided for amending the Constitution. But inspite of all the complications involved therein, the Constitution is loosely flexible because—

(i) the amendment process is comparatively easy and simple.

(ii) the clause of 'adaptation to emergency and circumstances as they may be—is always there. For example—in the face of an emergency, a single twist of the President's pen can melt all the differences between unitary and federal systems.

Q. 2. Write a critical estimate of the scheme of Indian Federation.

(Agra 1951.)

Ans. Federalism is a modern conception. There are three leading characteristics of a federal constitution—supremacy of the Constitution; distribution of powers among bodies with limited and co-ordinate authority, and Supremacy of the judiciary which is intended to act as interpreter of the Constitution.

The Indian Union exhibits all the normal characteristics of a federation, a rigid and written constitution, distribution of powers between the national government and the State Governments, and a Supreme Court.

The federal constitution of India is the latest addition to the federal Constitutions of the world. Its framers have borrowed largely from other federal constitutions and have drawn upon the experience and close study of their working, and they have attempted to embody in the Constitution, provisions which are necessary and essential in a federal polity, but have modified them to meet the peculiar needs and conditions of India. It is sufficiently elastic as an instrument for the Government of the country. Its federal character consists in its adaptability to India's changing and growing needs. Hence, there are some special features of the Indian federation resulting from the special political conditions of India and from the circumstances under which it was brought into existence. These features are—

1. Federalism has normally been a process of uniting. But in India, federalism had been a process of breaking up British India into a number of autonomous Provinces in 1937, and therefore into a number of linguistic units. The historical process of the formation of a federation for India had been just the reverse of what it had been in other countries, and the aims which brought other federations into existence had also not been operating in India. Here federation was not the manifestation of the urge of the people towards a creative union embodying national unity.

2. The Indian federation is a dual polity with a single citizenship for the whole of the Nation.

3. On a closer view, it becomes obvious that the union is not strictly a federal polity but a quasi-federal polity with some vital and important elements of unitarism. Our Constitution is designed to work as a unitary government in times of emergency. Once the President issues a Proclamation of Emergency, our federal constitution assumes a unitary form.

4. Unlike the federation of the U. S. A. and like that of Canada—the Indian Constitution contains provisions relating not only to the Constitution of the Union but also to the Constitution of the States. The States and the Union have got in a single structure—their constitution—from which neither can get out and within which they must work.

5. In the scheme of distribution of powers we find a phenomenon unique in the history of federal Constitutions. It is obvious that in most federations certain powers are assigned either to the States or to the federal Government and the residuary power is given to the former or the latter as the case may be. In other words, mostly the state has the residuary legislative powers and the centre has only specific enumerated powers. While here, in the Indian federation, the powers of both the federal Government and the State Governments are specifically enumerated in their exhaustive Legislative lists, and the residuary powers are assigned to the centre.

6. The Union and the State Governments are each organized separately and independently for the performance of their functions—legislative or judicial. But though they are separately organized, they are integrated and in reality function as a whole.

7. A federation, being a dual polity, based on divided authority with separate legislative and judicial powers for each of the two polities, is bound to produce diversity in law, in administration and in judicial protection. The Indian Constitution has provided means, whereby the Indian federation can secure uniformity in all matters which are essential to the unity of the country—(i) there

is only a single judiciary, (ii) there is uniformity in fundamental laws—civil and criminal, and (iii) for better and efficient administration, special recruitment to high posts of the Government is provided by special All—India Competitive Examinations *e.g.*—the I. A. S.—the I. P. S. etc., etc.

The Indian Union, though a dual polity, has no dual judiciary.

Thus we come to the conclusion that in spite of the fact that India enjoys the supremacy of a written and rigid constitution the distribution of powers between the centre and component units is very clearly marked and above all the judiciary with all its vital constitutional powers is established—summing up the whole we can assert that our federation resembles the Egyptian pyramids which begin with federal base and narrow upward to evolve into a singular unitary top.

Q. 3. Critically examine the scheme of Fundamental Rights as given in the new Constitution of India.

Ans. For the citizens of India, the constitution provides certain Fundamental Rights. Such Rights are essential and necessary for the proper moral and material development of the people and through that, the realisation by them of their best selves. These Rights are the statements of sanctity which none can dare to violate lightly. They are a standing reminder to the Government and the people that certain things must be respected and certain others must not be done. In other words, the provision of Fundamental Rights is a guarantee of the benefit of the governed—they are the measure of a country's freedom.

OUR RIGHTS

The principal Rights as promised in our Republican Constitution may be classified as follows :—

1. Right to equality.
2. Right to freedom.
3. Right against Exploitation.
4. Right to freedom of religion.

5. Cultural and Fundamental Rights. 6. Right to Property. 7. Right to Constitutional Remedies.

1. Right to Equality.

Articles 14 to 18 deal with the Right to equality. This prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth. The Article is absolute. It admits of no exceptions. The Right to Equality in our constitution is significant because of its universal character. It further guarantees equality of treatment in relation to all public secular institutions.

There is one humane partiality herein. The exception is in case of women, children and the backward classes, for it is a fact that democracy, like a true mother, must take care of all its children, whether promising or unpromising.

This right has been further stressed by the abolition of titles, except only those which are conferred as academic or military distinctions.

Access to public places is also fully and rather 'jealously guarded' without any discrimination of any sort.

2. Right to Freedom.

Article 19 guarantees individual liberty. It confers, in all comprehensiveness, on every citizen the right to freedom of speech, and expression, the right to assemble peacefully and without arms, form associations or unions, move freely throughout the territory of India and settle in any part of it, acquire hold and dispose of property and practise any profession or carry on any occupation, trade or business.

It is a dilemma for a democratic state to ensure its own safety and integrity and at the same time secure the maximum of liberty without which democracy cannot function. These rights, therefore, obviously could not be conceded without due limitations. They could not be absolute. And hence, the Constitution enables the State to

restrict these Rights in the interest of public order, security of the State and peace.

It does not allow any right that aims at libeling, slandering or defaming and overthrowing the State. Also, the Right to Speech and expression has been granted with the necessary implication that nothing shall be done to harm the prestige, morality and decency of the State or to undo the State structure itself.

Article 22, comprehensively lays down certain provisions regarding *preventive detention*. This means that a person shall not be detained for longer than three months, unless an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as Judges of a High Court, has before the expiry of the said period, shown sufficient cause for such detention.

This article has met with sharp criticisms. People condemn it as being contrary to the very spirit of liberty. And, undoubtedly, this article is a positive proof of an over emphasis of the need of State security at the cost of individual liberty.

3. Right against exploitation.

Economic liberty has also been secured in the present Republican Constitution of India. Traffic in human beings—kidnapping, slavery and selling—and forced labour have been prohibited and are made an offence. Employment of children under fourteen to any hazardous tasks has been forbidden. However the state can impose compulsory service—military Conscription. This is only to create social harmony among all the citizens of India.

4. Right to freedom of religion.

Our country has ever been a land of religious diversities. And it was religion again which when mixed with politics, divided India. But the new constitution gives us a state which is secular and has no religion of its own, to preach

and propagate. The Constitution, on the whole, establishes the principle of religious toleration. It guarantees full freedom of conscience and worship.

5. Cultural and Educational rights.

This safeguards the right of a minority community to preserve its own language and culture; the State thus guarantees all opportunities to them.

6. Right to property.

The specific provision reads—"no person shall be deprived of his property save by law," such law must provide compensation for the property taken possession of or acquired. This Article like the others has been made the butt of the vilest criticism. It is said that this right to property is against the spirit of socialistic trends today.

We all are aware of the various difficulties which this Article has gathered round it.

7. Right to Constitutional Remedies.

Article 32 guarantees the Right to move the Supreme Court for enforcement of Fundamental Rights. There is a provision that in case of emergency these constitutional remedies may be declared by the President to be suspended. The Fundamental Rights can be restricted or abrogated by the Parliament in their application to the members of the armed or police forces in the interest of discipline and proper discharge of their duties, and the Parliament can pass acts of indemnity protecting state servants in respect of acts done for restoration or maintenance of order during martial law.

Q. 4. Write a note on the directives of State policy and assess their importance.

Ans. Certain directions have been given to the Governments by the Constitution, for the purpose of bringing about a desirable social order. These are the directive principles of state policy. These are also found

in the Constitution of Ireland. However, these are only directions—not constitutional laws; the failure to follow them will not entitle the courts to intervene to enforce them.

These may be grouped under three classes which we may call socialistic, Gandhian, and Liberal.

Socialistic. These direct the State to aim at adequate means of livelihood for all citizens, distribution of material resources of the nation in the interest of the common good; avoidance of the concentration of wealth and means of production to the common detriment; equal pay for equal work to both men and women alike; protection of workers—especially children; right to work; education; maternity relief; living wage, decent standard of life and leisure for all. These are some of the objectives obviously meant to reassure those who demanded the establishment of a socialist state.

Gandhian: These recommend organisation of village Panchayats as effective units of self-government, promotion of cottage industries in the rural areas; protection and uplift of the scheduled castes and tribes etc., etc.

Liberal: This includes directives of a miscellaneous character e.g. free and compulsory education for children upto 14 years of age; uniform civil code for the whole nation; protection of historical, artistic and other monuments, promotion of international peace security and justice etc., etc.

Critics are of the opinion that because these directives impose no legal obligation on the state for their implementation, they deserve to be scoffed at as pure window-dressing. But the fact is that they are the standing reminder to the Government and the people as to what is to be done.

Q. 5. Who can be the President of India? How is he to be elected and removed? What are his allowances and privileges?

Ans. The executive authority of the Indian Union is vested in one man, the President of the Indian Republic. He is the outcome of a Republican Parliamentary form of Government.

The qualifications. The qualifications of this 'element of continuity' in the Government are as follows:—

Any person who seeks election as President of the Indian Union, must—

1. be a citizen of India ;
2. have completed the age of thirty-five years ;
3. be qualified for election as a member of the House of the people, and
4. must not hold any office of profit under the Government of India or any of the State or Local Governments. Moreover, he must not be a member of the Union Parliament or any State Legislature. If any member of these bodies is elected President, his seat will be deemed to have been vacated forthwith.

The election of the President.

The election of the President is to take place indirectly, through an electoral College, consisting not of people but of people's representatives, as follows :—

(1) the elected members of both Houses of Parliament, and

(2) the elected members of the Legislative Assembly of the States.

The election will be held on the system of proportional representation by means of a single transferable vote. And the voting shall be by secret ballot system.

His Removal.

The President may resign his office even before the completion of his term. He may also be removed by

means of impeachment. He may be impeached only for violation of the Constitution, the charge being preferred by either House of Parliament. The other House shall be required to investigate the charge or cause it to be investigated by any suitable body. If the charge levelled against the President has been sustained by a two-third majority of the investigating House, it shall necessitate the removal of the President from his office with effect from the date on which such resolution has been passed.

Allowances and Privileges :—The President gets an official residence and draws a salary of Rs. 10,000/- per month, which cannot be reduced during his term of office. He is also entitled to the same emoluments, allowances and privileges to which the Governor General was, before January 26, 1950.

Q. 6. "A phantom King without a Crown, the Indian President is a prototype of the French President and the English King, though endowed with potentialities greater than both of them"—Explain in the light of this statement, the powers and functions of the President of the Indian Union.

Ans. Dr. B. R. Ambedkar pointed out that, "The title of this functionary—the President of Indian Union—reminds one of the President of the United States of America. But beyond identity of names, there is nothing common between the form of government prevalent in America and the form of Government under the Constitution." Our President is more like the phantom monarch of England and the powerless President of France though in many refinements of theory the President of India is endowed with greater powers inherent in his title.

Both the British King and the French President, are the supreme representatives of the executive power in the State. They are the heads of their respective States and hold the highest esteem of either Nation's sentiments. Both have, more or less, surprisingly identical powers. The summoning of the legislature, their supreme command over

the forces of the Nation, power to appoint all higher officials including, of course, the Prime Minister and his ministers, negotiation of treaties with foreign powers, seeing to the execution of laws, power to dissolve the respective legislatures—are some instances which clearly indicate as to the identical status of both the English King and the President of the French Republic. But there is a world of difference between reality of power and the mere shadow of it. So when we say that either—the British monarch or the French President—enjoys these powers only on the advice of the ministers responsible to the legislature, the factual exercise of powers becomes fictitious. In other words, all these powers of both the English King and French President are formal and nominal, and not real. The British King or the French President—do not govern. They have only the right to be consulted and warn.

Similarly, the President of the Indian Republic though carrying all the weight of formidable powers and to a superficial observer, looking no less a despot—exercises no powers in reality apart from his Council of Ministers. To all practical purposes the Indian President is no more than a Constitutional figure-head. This becomes obvious when we analyse the vast range of his powers endowed to him by the Constitution. These powers may be analysed under the following head :—

Executive Powers.

All executive action is expressed to be taken in the name of the President. He is the Supreme Commander of all the Defence Forces of the Indian Union. He appoints all and dismisses all. He accredits and receives all the ambassadors. In short—he is the chief executive of the state.

Legislative Powers.

The President is empowered to call, adjourn and prorogue the Parliament. He can issue ordinances which are of immense constitutional significance. All Bills passed by the Legislature are presented to him for his assent.

No money bills can be introduced except on his recommendation. When we say that he is the supreme regulator of all legislative measures, moves, enactments or proposals—it is sufficient.

Financial Powers.

All transactions regarding the finances of the country are subject to the knowledge of and due subjection to the President. The President is the supreme judge for all budget estimates and distribution of money to various heads and he is the man who runs in turn the financial machinery of the State.

Judicial Powers.

The President is empowered to grant pardons, reprieves or commutation of sentences to any person convicted of any offence. He is the fountain of justice and mercy.

Emergency Powers.

In matters of emergency caused by war, aggression or internal disturbances—or emergency caused by the failure of the Constitutional machinery—or emergency caused by financial instability—he is entitled to proclaim a state of emergency. In such conditions, the discretion at the President's command has a real say to an extent of which the nominal executive heads in France and England can never dream.

In this period of 'emergency' the federal structure of the Union is converted into a unitary one and the powers of the State legislatures lapse. Our fundamental rights shall also remain suspended during such state of emergency.

To lay aside the pungent criticisms levelled against the 'Emergency Powers' of the President, we may safely quote Amar Nandi to show the reality that the provision of the emergency powers in the hands of the President is a "loaded gun which can be used both to protect and to destroy the liberty of the citizens."

Any such proclamation can at best be in force for not more than three years.

Thus we find that though a step ahead of the French President and the British King, the President of India is still subdued like his two French and British prototypes because of the fact that all that he does is on the advice of his ministers. The powers and functions of the Indian President are in reality those of the Prime Minister and the Council of ministers.

Q. 7. Critically examine the Emergency powers of the Indian President.

Ans. The President of the Indian Union has been given very extensive powers in matters of emergencies. He can, if he is satisfied that the security and peace or the financial stability of India or any part thereof is being threatened-proclaim a state of emergency. The Constitution envisages three types of emergencies :—

(i) Emergency caused by war, aggression, or internal disturbances.

(ii) Emergency caused by the failure of the Constitutional machinery in the States.

(iii) Emergency caused by Financial instability.

(i) Emergency caused by war :—

If the President feels that the security or Peace of India is threatened by reason of war, external aggression or internal disorders he may declare a state of emergency. Any such proclamation when made must be submitted before the Houses of Parliament. The period during which such a proclamation is to be effective is two months unless otherwise decided by Parliament. In that case it shall be valid for six months and in no case for more than three years.

This emergency provision makes our federation assumed a unitary character for the powers of the State legislatures

are to be suspended in this period. The Union Parliament wields extraordinary powers. Laws may be made for universal execution in India. Our fundamental rights cease to exist and operate under the shade of emergency.

(ii) Emergency caused by failure of the Constitutional Machinery in States :—

If the President feels satisfied on the basis of the reports from the Governor or Rajpramukh that an emergency had arisen on account of the constitutional machinery in a State, he can forthwith issue a proclamation of emergency. This means transfer of all executive powers of the Provincial Government to the President himself. The Powers of the State legislature cease to exist and are instead passed on Union Parliament. This has recently happened in the case of Punjab.

(iii) Emergency caused by financial instability.

If a financial crisis, a threat to solvency or credit of India, has to the President's satisfaction arisen in India or any part thereof, he can proclaim a state of emergency to that effect. This will mean even a cut in the allowances and salaries of all public servants belonging to the Union or the State etc., etc.

The conferring of emergency powers on the President has been deprecated and appreciated alike. Its operation may be suicidal to the very concept of democracy. As K. T. Shah's words aptly suggest—Democracy would be crucified and dictatorship would come instead—Federalism would be strangled and the President would be all powerful in this emergency period.

However, the two world wars have taught us that it is necessary that the integrity of the State must be maintained in the best interests of the rights and liberties of the people themselves. It means no denial of the ingredients of democracy at all.

Q. 8. Describe the composition, powers and functions of the Union Parliament.

Ans. In accordance with Article 79, the Parliament of the Indian Union consists of the President and the two Houses known respectively as the Council of States and the House of the People. Thus, like the Legislatures of other federations, the Union Legislature is bicameral. The Upper House represents the units, the Lower House represents the people, the two Houses respectively at once functioning to preserve the integrity of the units and to secure the integration of the Union. The President is not a member of either House, but he is none the less an integral part of Parliament and has certain important functions to discharge in connection with its proceedings.

House of the People.

Its composition. The maximum strength of House of the People shall be 500. The elections of its members, shall be direct, every adult man and woman being eligible to vote. The overall intention of the election is to maintain uniformity of election on the basis of population. The principle adopted is that of 'adult'. The system of proportional-representation has been scrupulously avoided. Provision is, however, made for a period of ten years after the commencement of the Constitution—for scheduled castes and scheduled tribes in the tribal areas in Assam.

*Its tenure :—*The normal life of the House of the People shall be five years which, however, can be extended by Parliament for a period of one year at a time, if there exists a proclamation of Emergency.

The Council of States.

Its Composition. The Council of States shall form the second Chamber of the Indian Parliament. It shall comprise of the representatives of the States who shall be chosen indirectly and by means of proportion by the elected members of the Legislative Assembly of the States. The maximum strength of this House shall be 250; out of which 12 members from amongst the distinguished personalities

in the realm of Art, Science and Social Services shall be nominated by the President.

Its tenure :—The Council of States, like all the other Upper Chambers of the world, shall be a permanent body, not subject to dissolution. One third of its members shall be retiring every second year.

Privileges and Immunities of the members of Parliament.

Freedom of speech has been fully guarded during the Parliament proceedings. The freedom, however, is subject to the provisions of the Constitution and rules and standing orders of Parliament. The members of Union Parliament are also granted immunity from any penal action for any speech made or vote given in Parliament, or in any of its committees.

Unless a person ; (a) is a citizen of India; (b) is, in the case of a seat in the council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and (c) possesses such other qualifications as may be prescribed in this behalf by or under any law made by Parliament, he is not qualified to be chosen to fill a seat in Parliament.

Functions of Parliament :

The functions of our Parliament may be analysed under the following heads :—

(i) *Legislative.* The main business of Parliament is to make laws. All Bills, of whatever nature and from whichever quarter, are first laid down on the floor of Parliament which, after due discussions, has the choice to reject or to accept them. All Bills except Money Bills, can originate in either House. Money Bills and other financial Bills, can only originate in the House of the People.

(ii) *The Control of the Executive.* Secondly, Parliament shall enforce the responsibility of the Council of Ministers

to itself. "The Council of Ministers shall be collectively responsible to the House of the People"—gives all about this fact. Although the methods of enforcing responsibility are not specified in the Constitution, it may be presumed that the responsibility may be enforced by the member's (i) right of putting questions; (ii) of passing a vote of censure. (iii) of passing a vote of no confidence against a particular minister or the entire Council of Ministers; (iv) of rejecting a bill sponsored by a minister or of putting in it such amendments as are unacceptable to the Minister; or (v) of reducing or rejecting any demand for grant or any proposal of taxation.

(iii) *Financial* :—Thirdly, Parliament as the nation's representative, shall control the finances of the Union. It is an accepted dictum of democracy that the people shall consent to be taxed and shall assent to the Nation's expenditure. This the members of the Union Parliament shall do, so far as the budget of the Union is concerned.

(iv) *Judicial*. Fourthly, Parliament shall act as a judicial body in case of impeachment. The Parliament can impeach the President in case he violates the Constitution. One House shall prefer the charge and the other House shall investigate into it.

Last, though not the least, the Parliament, though not meddling into the administration of justice, shall look ultimately into the purity and continued dispensation of the same.

Q. 9. Write a note on the legislative procedure followed in the Indian Parliament.

Ans. The Parliament has the power to legislate on all the subjects of the Union and the concurrent lists, and under specified circumstances, also on subjects of the State list. Except in times of emergency duly declared by proclamation of the President, it cannot legislate in violation of the fundamental rights guaranteed by the Constitution. The Parliament can legislate with extra-territorial effect also.

Legislative Procedure.

Every bill shall be given three readings, and when passed by one House, shall be sent for consideration by the other House. A bill shall be deemed to have been passed only when it has been agreed to by both Houses with or without amendment.

The President enjoys a veto over the Bill presented to him before it is passed. However, this right to veto is only suspensive in nature. The two Houses are empowered to over-ride his veto by passing Bill again by a simple majority.

Procedure regarding Money Bills.

A special procedure is provided regarding Money bills. A Money Bill must be introduced in and passed by the Lower House which shall after its passage transmit it to the Council of States for its recommendations. The Council of States cannot detain a Bill for more than 14 days—and the Bill must be returned to the House of the People with or without the Council's recommendations within the prescribed period. The House of the People may accept or reject such recommendations. If the Bill is not returned within the specified time, it shall be deemed to have been passed by both the Houses in the form in which it was passed by the Lower House.

A Money Bill. In short, a money bill is a bill dealing with revenues, expenditure, funds audits, etc., of the Union. Any doubt whether a Bill is or is not a money Bill is decided by the Speaker of the House of People and his decision is final.

Procedure in Financial matters.

Parliament shall be responsible being endowed with absolute powers to exercise effective control over the finances of the Government of India. Votable estimates shall be submitted directly to the House of the People. The Council of States shall not come into picture. The House of the People may assent, refuse, or reduce the

grants. All demands for grants shall be made on the President's recommendations.

The main aspects of the financial procedure shall comprise, firstly of an annual financial statement, secondly, the demands for grants, and thirdly the Appropriation Bills and other financial Bills.

Introduction of Bills.

Bills relating to certain matters cannot be introduced in either house without the previous sanction or authorization of the President, *e.g.*, bills to redistribute or alter the areas of the States of Part A or B or to alter the official language for purposes of bills, acts, and proceedings of the Supreme and High Courts during the first 15 years, etc.

The first reading.

Bills other than the Financial, may be introduced in either of the Houses. A member wishing to introduce a bill, first seeks the leave of the House to do so. Having got the leave of the House concerned the member introduces it by reading its title and if it is an important one, may also make a speech outlining its main provisions. This is the first reading of the bill and it ends in a motion by the sponsor of the bill either to refer it to a select committee, or to circulate it for eliciting public opinion on it, or to request its consideration by the house immediately.

The second reading.

The select committee to which a bill is referred consists of its sponsor and a few other members of the house selected for the purpose. It considers the bill in detail and proposes such amendments to it as it thinks necessary. It sends its report on the bill to the house. After the move for the consideration of this report - a discussion of the general principles of the bill follows and the house considers the bill emerged out of its committee stage, clause by clause. Amendments may be moved at this

moment. Each amendment is discussed and voted upon by the house and finally the clause in question—at hand—is put to vote. The bill likewise goes under a thorough investigation and discussion in the report stage which follows the committee stage.

The Third reading .

Finally, the bill figures on the agenda of the house once more and is given its third and final reading. The third reading is in fact a formal affair. No substantial changes are in order at this stage. After this reading, the bill is deemed to have been finally passed by the House of its origin, receives a certificate to that effect and goes to the other House.

The bill in the other House.

The same procedure is followed there also. If passed there likewise and in the form in which it came from the House of its origin, it is sent to the President for his assent—having received which—it becomes law.

This is the normal legislative procedure which a bill follows in order to become law, but there may be certain complications necessitating some additional or alternative steps also.

Disagreement between the Houses.

If this happens, an effort is made to secure an agreement of the two Houses over the bill either by means of a joint committee of the two Houses, or by sending it from one House to the other and back again till the differences are removed. If, however, the Houses finally disagree, their differences may be settled by means of a joint sitting convened by an order of the President.

The President's assent.

Even when the Houses have passed a bill the President may demand its reconsideration.

Private member's bill.

In our Parliament, there is no special procedure for private Member's Bill such as is the case in England. They follow the same procedure as the Government or official bills ; but consideration can take place only during the time available for non-official business. For this reason alone, their progress may be slower.

Q. 10. Describe the composition, jurisdiction and powers of the Supreme Court in India.

Ans. Composition.

At the apex of the judicial system of the country, stands the Supreme court of India. It consists of a Chief Justice of India and not more than seven other judges until Parliament by law increases the number. The President appoints every Judge of the Supreme Court. Provision has also been made for the appointment of *ad hoc* judges and the attendance of retired judges at the sittings of the Supreme Court in case of need.

Jurisdiction.

Under the Constitution, the Supreme Court of India shall have wider powers than the Highest Court in any Federation of the World. It shall be a Court of record having all powers of such a court, including the power to punish for the contempt of Court. It is a final interpreter of the Constitution and a final court of civil appeal. It has both appellate and original jurisdiction.

Original Jurisdiction.

The original jurisdiction of the Supreme Court shall, to the exclusion of any other court, relate to the constitutional disputes between :

- (a) the Government of India and one or more states ;
- (b) the Government of India and any State or States on one side and one or more than one States on the other side ; or
- (c) between two or more States.

The appellate Jurisdiction :—

The appellate jurisdiction of the Supreme Court shall be three fold : Constitutional, Civil, and Criminal.

In constitutional cases, an appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court, if the High Court certifies that the case involves a substantial question as to the interpretation of law. In case the High Court refuses to give a certificate, the Supreme court, if satisfied that the case involves a substantial question of law as to the interpretation of this Constitution, may grant special leave for such appeal.

2. In regard to civil matters, the appellate jurisdiction of the Supreme Court shall extend to an appeal from the judgment, decree or final order of a High Court, if the High Court certifies that :

(a) the amount or value of the claim involved is not less than Rs. 20,000/- or such sum as may be specified by Parliament.

(b) the judgment of the High Court involves directly or indirectly a question or claim regarding property worth the said amount, or

(c) the case is fit to be appealed to the High Court. If the appeal affirms the decision of the Court immediately below in any case except as stated in; (c) the High Court must certify that the appeal involves some substantial question of law. The judgment, decree, or final order of one judge of a High Court is exempted from appeal to the Supreme Court.

3. In regard to criminal jurisdiction, an appeal shall lie to the Supreme Court from any judgment, final order, or sentence in a criminal proceeding of a High Court, if the High Court has,

(i) on appeal reversed the order of acquittal of an accused person and sentenced him to death, or

- (ii) withdrawn for trial any case from any court subordinate to its authority and has in such trials convicted the accused person and sentenced him to death ; or
- (iii) certified that the case is a fit one for appeal to the Supreme Court. The jurisdiction of the Supreme Court in criminal cases can be enlarged by the authority of the Parliament, subject to the condition and limitations specified by it.

Special writs and powers :—

The Supreme Court, as authorised by Parliament, has the power to issue orders, directions, or writs including writs in the nature of 'Habeas Corpus,' 'Mandamus,' prohibition, 'quowarrant's, and 'ceritorari' or any of them for the enforcement of the Fundamental Rights. The law declared by the Supreme Court shall be binding on all courts of India.

Advisory Jurisdiction.

The President can refer to the Supreme Court, seeking its opinion on any question of law or fact of public importance.

The Supreme Court, it has been expressly provided, shall deliver all judgments and opinion in open Court, with the concurrence of a majority of the Judges present.

The Supreme Court is also the ultimate guardian of the fundamental rights and liberties of the citizens. The Constitution empowers all of us, the right to move the Supreme Court for the enforcement of the fundamental rights through the appropriate procedure.

Q. 11. Write a note on the powers and functions of the State's Governors as provided in the new Constitution of India.

Ans. The Governor of a State shall be appointed by the President by warrant under his hand and seal. He shall

hold office during the pleasure of the President—but ordinarily the term fixed is five years.

The position of the Governor is largely modelled on that of the Union President. The Governor have not been given any discretionary powers except in case of Assam.

The powers of the Governors in brief are as follows :—

Executive Powers.

As the head of the State, the full executive power shall be expressed to be taken in the name of the Governor. It shall be exercised by him either directly or through officers subordinate to him. The executive authority of the Governor shall extend to only such matters for which the State Legislature has the power to make laws. In matters included in the concurrent list, the executive powers of the union shall prevail over that of a State. The Governor shall make rules for the convenient transaction of the Governmental business and for the allocation of the said business among his ministers. He shall appoint the chief minister of the State, and on his advice the Council of Ministers, which shall hold office during the pleasure of the Governor. He, thus is the chief appointing and dismissing authority in a State. He has the power to grant pardon and reprieves. He can suspend, remit or commute sentences in certain cases.

Legislative Powers.

The Governor is at all times potentially a participant in the law making process. He may initiate legislation, promote it and often times push it through both the Houses by the weight of his official influence. Every bill, after being passed by the Legislature, shall need the Governor's assent—who has the right to assent or withhold his assent therefrom. He may, except in case of a Money Bill, return any bill for reconsideration to the House in which it was originated. He may also reserve a bill for Presidents' assent and consideration. Without the recommendation of the Governor no Money Bill or financial

Bills shall be introduced in the Legislative Assembly. The Governor is empowered to issue and promulgate Ordinances during the recess of the State Legislature.

Financial Powers.

An annual financial statement showing the estimated expenditure and receipt of the State for that year shall be caused to be laid before the Houses or the House of the State Legislature. The Supplementary or additional expenditure desired is also laid by him.

Q 12. Briefly discuss the composition, powers and functions of the State Legislatures.

Ans. The Constitution lays down that every State of Part A of the first schedule shall have a Legislature consisting of the Governor and a House and in some States two Houses, as already noted. The House or the Houses of the States Legislatures must be summoned to meet at least twice every year and six months shall not intervene between the last sitting in the one session and the first sitting in the next Session. The Governor, however, to be brief wields all powers regarding the proroguing or dissolution of the House or Houses.

The Legislative Assembly.

This shall be a popular body whose members shall be directly elected on the basis of adult franchise. The maximum strength is fixed at 500. The normal life of the Assembly—unless dissolved earlier—shall be five years. In emergency extension may be granted for one year.

The Legislative Council.

If any, this body shall be the Upper Chamber of the State Legislature and as such it shall be a permanent body not subject to dissolution. Its one third members shall retire every second year. The election in whatever case, to either House shall be on the principle of proportional representation with single transferable vote.

The Legislative Council has been accorded a definitely subordinate position in respect to the Legislative Assembly of the State. Besides Money Bill the power of the Council is circumscribed even in the cases of ordinary Bills. All other Legislative procedures both with regard to ordinary as well as Money Bills and functions and the relationship between the two Houses of the State—Legislature are exactly parallel to those of the Union Parliament.

Functions.

The State Legislature is to make rules for regulating its procedure and conduct of business. All questions, except when the Constitution provides otherwise, shall be decided by a simple majority of the votes of the members present and voting. The Legislature is not authorised to hold discussions regarding the conduct of a Judge of the High Court or the Supreme Court in their respective spheres of action. The speaker or the Chairman shall have the casting vote.

State Legislature and Legislation.

The Legislature of a State has the competence to make laws for the whole or any part of the State. However, it is the Governor or the Rajpramukh alone who can summon or prorogue the Legislature and the Lower House of a Legislature can be dissolved by him before the expiry of the specified period. Every Bill passed by the Legislature shall require the assent of the Governor, who may give it or may withhold it—which is more of a suspensive and dilatory nature, rather than a real obstruction. However, there are Bills which are essentially put aside for the President's assent.

The Legislature and the Executive.

The Ministers of the State shall be the members of the Legislature. They shall be appointed by the Governor but in consultation with the person (would be Prime Minister) who shall be likely to command a majority in the

Legislature. The responsibility of the Executive to the Legislature is collective ; they shall stand or fall together.

The State Legislature may also pass an Act bestowing additional functions on the State Public Service Commission.

Q. 13. Describe briefly how the legislative powers have been distributed between the Centre and the States under the new Constitution of India.

Ans. In every Federation there exists a clear demarcation of powers of the centre and the constituent units, for, as Professor Dicey has said, "Federalism means the distribution of the force of the State among a number of subordinate bodies each originating in and controlled by the Constitution. "Hence, in India too, the Legislative functions of the Union and the States have been placed under different heads.

The principle adopted is "of the statutory allocation of powers, both to the Centre and the units through a system 'Lists' which are three in number. 'The Union List'; 'The States—List,' and 'The Concurrent List.' On the whole residuary powers have been vested in the Union Government. It has been clearly provided that neither the State nor the Union Legislature shall have powers to encroach upon the jurisdiction of one another. If at any time, there arises any dispute about jurisdiction it shall be referred to and decided by the Supreme Court of India, the decision of which shall be final and binding on both the parties.

The Union List.

The Union List contains as many as 97 subjects. Briefly these include Defence, arms, ammunitions and explosives, atomic energy, foreign affairs and international obligations, immigrations and emigrations, communication, currency and coinage, Posts and Telegraph etc, and broad-casting, property of the Union and its revenue, Foreign loans, Reserve Bank of India, Salt, Historical Monuments and

archaeological institutions etc , etc. including Union Public Services and all other All India Services etc.

The State List.

It enumerates the subjects on which the State Legislatures have been authorized to legislate. This includes Public order, Police. Administration of Justice, Prisons, Local Government, Public health and sanitation, agriculture and trade, taxes of all sorts etc , etc.

The Concurrent List.

It contains 47 subjects upon which both the Union Parliament and the State Legislatures shall have the power to make laws. In case of inconsistency the laws of the Union Parliament are to prevail over the State Laws. These subjects include—criminal laws, criminal procedure, preventive detention, marriage, and divorce, contracts, bankruptcy and insolvency, rehabilitation of the displaced evacuees property etc , etc.

From the foregoing, it is obvious that the present constitution leaves enormous legislative powers in the hands of the Centre. This grant of overwhelming powers to the Centre, has, however, been done under very compelling and strong reasons of diversity and vastness of the country.

Q. 14. Write a critical essay on the Public Service Commissions as provided by the new Constitution of India.

The Constitution establishes a Public Service Commission for the Union and Public Service Commission for each State.

The Chairman and other members of the Union Public Service Commission or of a Joint Commission shall be appointed by the President and those of the State Commissions by the Governor or the Rajpramukh. The President shall like-wise determine the number of the members of the Union Public Service Commission or of

a Joint State Commission and the Governor or the Rajpramukh will do so in the case of a State Commission.

A member of a Public Service Commission shall remain in office for a term of six years or till he attains—in the case of the Union Commission—the age of sixty five years. Any member of the Public Service Commission may also be removed from office by the President if he; (a) is judged an insolvent, (b) accepts during his term any paid employment other than the duties of his office, or (c) is, in the opinion of the President unfit to hold office any more by reason of infirmity of mind or body. A member on the expiry of his term shall not be eligible to re-appointment.

Public Service Commissions are constituted to secure impartiality in the recruitment to Public Services, so that efficiency shall be the only criterion. Independence of the Commission is therefore, as necessary in the interest of purity of administration as the independence of the judiciary is in the interest of purity of justice.

Function.

Primarily, the Public Service Commission is to conduct examination for appointment to the Services. Its functions are advisory and not executive. The Service Commissions are to be consulted on :—

- (i) the methods of recruitment to Civic Service and for Civil posts ;
- (ii) appointments, promotions, and transfers of the Civil Service officials ;
- (iii) disciplinary matters affecting a person employed in a Civil capacity, including memorials or petitions.
- (iv) claims for the defence of the legal proceedings by or in respect of any person serving in a Civil capacity—and,
- (v) claims for the award of a pension in respect of injuries sustained by a person while serving in a civil capacity.

Constitution of Switzerland



CONSTITUTION OF SWITZERLAND.

Q. 1. Briefly describe the people and the Geography of Switzerland? How far both reflect in the Swiss Constitution?

Ans. Switzerland is a mountainous country lying in the heart of South-Western Europe with Germany on the north, Austria on the east, Italy on the south and France on the west. The total area of the country is 15,944 sq. miles and the total population being 4,066,400. 53.5 per cent of the people depend upon agriculture and the rest are employed in pastoral pursuits and manufactures.

The population of Switzerland is not homogeneous. Diversity, as a matter of fact, is more profound particularly in racial stock, religion and language. People of three different descents—Germans, French and Italians—are found there. German language is spoken by nearly 71%, 23% speak French and the language of about 6 per cent is Italian. Similarly three different religions are followed. About 57% are protestants, nearly 41 per cent Catholics and 0.5 per cent Jews.

In spite of the geographical diversities of the country, religion and language, customs and economic pursuits the Swiss people have developed a high sense of democracy. Smallness of area and population have contributed to make democracy an eminent success. It is, again, this diversity that Switzerland has evolved truly federal institutions. According to Bon Jou, the Swiss system of Government is a "real democracy in operation and the country presents a greater variety of institutions based on democratic principles than any other country. Athens and Switzerland have been said to be the most complete examples of ancient and modern democracy. It is rather

a living example of direct democracy where the people take an active part in the government of their Cantons. The Government of the country, in brief, 'is patriotic, far-sighted, efficient, economical and steady in the pursuit of its policy. Corruption in public life is almost unknown and appointments to offices are made on the, sheer basis of merit and not for political purposes. The problem they have to solve is that of self-government among a small, stable and frugal people, and this is easier of solution than the couple problem of self-Government in a great rich and ambitious nation. But the methods the Swiss have followed would undoubtedly produce different results under another set of circumstances."

The Treaty of Westphalia (1648) marks the dawn of Swiss Confederacy, but it was a loose confederation without a strong central authority. Each Canton was more or less autonomous and whenever emergency arose a congress of the delegates of several cantons, called Diet, used to be convened and matters decided by common consent. In the absence of a central authority the decisions of the Diet which used to be the decisions of the majority of the Cantons could not be made binding on the differing Cantons. This state of affairs continued for about two centuries. When in 1848 the Civil war between the Protestant and Catholic Cantons induced the Swiss people to form a federation. A draft envisaging a real federation drawn up by a committee of the Congress was ratified by the Cantons in 1848. But even then the Central Government lacked sufficient authority and, accordingly, necessary revision was effected in 1874. The Constitution of 1874, with certain subsequent amendments is the constitution under which Switzerland is governed to day.

Q. 2. State the salient features of the Swiss Constitution?
(Agra 1943).

Ans. The following are the main features of the Constitution of Switzerland.

Its written character.

The Swiss Constitution is mainly written as it is the condition precedent in a federation. The Constitution is twice as long as the Constitution of U. S. A. and deals with such matters of detail as would seem strange to people of other countries. Customs and Conventions also find, a prominent place and play an important part. For example, the Constitution empowers the Federal Government to determine the conditions under which aliens can be naturalized in the several Cantons. But the Central Government has never done it. By an established custom each Canton has its own rules of naturalization. As a matter of fact an alien gets himself naturalized in a Canton and thus becomes a Swiss Citizen.

Its rigidity

The Constitution is rigid, though the procedure to amend it is easier than that of the United States of America. There are two methods of amending it :—

(1) Proposals for amendment may be initiated by the members of the Federal legislature. If both the Houses agree to such an amendment, then it is referred to the people for their approval. It is not only essential that the majority of the people should vote in its favour, but majority of the Cantons also should approve of it, i. e. by a majority of voters in a majority of Cantons. This method is known as the obligatory referendum.

(2) The proposal for amendment may even come from the people. If 50,000 citizens, it is prescribed, desire an amendment they may send up their proposal in general term or in the form of a Bill by means of an initiative. If the proposal is in general terms the Federal legislature considers it and if approved formulates a Bill embodying the proposal and submits it to referendum. If the legislature disapproves, it must submit the question of revision to a referendum. If the majority of the voters approve of it the legislature proceeds to formulate a bill, and submit it to the referendum.

When the demand for amendment is presented in the form of Bill, the formulated initiative, the federal authority must submit it for the assent of the people. If the Federal Legislature does not approve of it the Central legislature may frame a bill of its own or recommend to the people the rejection of the amendment, "and submit to them its own bill, or proposal for rejection, at the same time as the bill presented by popular initiative. To become law the bill must be passed by a majority of voters and the majority of Cantons.

The rights of citizens.

There is no separate Bill of Rights in the Constitution, but it has many articles dealing with the literature of the citizens. There is equality of all citizens before law and the Constitution guarantees to them freedom of worship, freedom of speech, freedom of press etc. But it makes no mention of trial by Jury.

A federal Republic.

Switzerland is a federal republic comprising of 22 Cantons, or more correctly 19 Cantons and 6 half Cantons. All these half Cantons have a government of their own as complete as many of the whole Cantons. The only distinction being that half Cantons send one representative to the federal legislature, while the other Cantons send two.

The Cantons and their constitutions are free from any kind of federal interference, provided they contain nothing contrary to the provisions of the federal constitution, maintain a representative or a republican form of Government and the Constitution is accepted by the majority of the people of the Canton concerned. The Cantons cannot form political alliances between themselves though they may cooperate for other purposes. Curiously enough the Cantons retain the right to conclude treaties with foreign States in respect of matters of public economy and police and border relations, provided all such arrangements contain nothing prejudicial to the rights of the Federation

and other Cantons. But all such communications between those Cantons who conclude such a treaty with foreign Governments must pass through the federal Council. No Canton or half Canton is permitted to keep and maintain more than 30 armed men as a permanent military force. This will make it clear that the Cantons retain very large powers even within the frame work of a Federation.

The Division of powers in Switzerland is more or less, identical, to that of U. S. A. There are certain enumerated powers which are within the exclusive jurisdiction of the centre. These are Foreign relations, military system, means of communications and transport, currency and banking, regulation of Commerce and Custom duties etc. etc. But residuary powers rest with the Cantons. In spite of this analogy with U. S. A. it must, however, be noted that the sphere of the centre and Cantons is not divided into water-tight compartments. Besides certain enumerated subjects which come under the control of the centre, there are certain concurrent subjects which are administered both by the centre and the provinces.

Switzerland has its own High Court, but unlike the Supreme Court of the United States of America, it has no power to determine the constitutionality of the federal laws. The Swiss have, therefore, failed to establish federal judiciary.

The plural executive.

Switzerland stands alone in the world to have a plural executive. It consists of a Federal Council of seven members who are neither jointly responsible nor do they owe allegiance to the chief executive. It may yet seem strange that the Federal Council is a pivot on which hinges the successful administration of Switzerland.

Direct democracy.

Switzerland is the only country in the world where Direct Democracy can be found at work. Referendum,

initiative and recall are the popular devices of direct democracy at work here

Q. 3. Describe the Composition and functions of the Swiss Federal Council. (*Agra 1939; Patna 1944.*)

Ans. The executive power of the Federation of Switzerland is vested in a Federal Council which consists of seven members. The members are elected for a term of four years in a joint session of the Federal Legislature. In practice the members to the Federal Council are chosen from the members of the Federal Legislature, although any Swiss Citizen eligible to the National Council may be elected a Federal Councillor. The members of the National Council who are elected as Federal Councillors have to resign their seats from the legislature. This secures separation of the executive from the legislature. Members are eligible for re-election and usually they are returned. There have been councillors who held office for as long as 32 years. According to the Constitution, no two members can be chosen from the same Canton; and according to convention, not more than five are chosen from the German-speaking Cantons.

The Federal Legislature elects every year the President and Vice-President of the Council. The Constitution provides that the President and the Vice President shall be elected to the same office in the following year. But by custom the Vice-President of one year is the President for the next year and accordingly the office passes by rotation among the members of the Council. The President of the Council is called the President of the Swiss Confederation. He does not exercise any special power or authority. His functions are only ceremonial in character and he is the titular head of the State.

Powers of the Federal Council

The powers of the Federal Council may be described under three heads :-Executive Legislative and Judicial.

With respect to executive powers the Federal Council, as head of the administration ensures that the federal laws are duly observed and peace and order is maintained. It conducts the foreign policy and relations and examines and approves treaties concluded between Cantons or with foreign countries. It ensures the internal and external safety of Switzerland in urgent cases and calls out the militia to keep internal order. The Federal Council makes certain appointments and supervises the work of Federal officers. "It ensures the observance of the Constitution and the laws and decrees of the confederation and federal concordats." It also takes necessary steps to the proper execution of the federal laws and guarantees the observance of Cantonal Constitution.

The members of the Federal Council have to resign their seats from the federal legislature after their appointment to the Council. The members of the Council, therefore, attend the sessions of the legislature but do not vote. It makes motions, formulates and prepares drafts of all important legislative measures. They answer to all questions and interpellations relating to their departments. The Council prepares the budget and submits it to the legislature, gives accounts of its work to the Assembly and makes such special reports of its work as the Assembly may demand.

The Council retained some of the judicial functions particularly relating to the administrative law. But with the establishment of the Administrative Courts in 1926, the Council has lost much of this Judicial powers.

Q. 4. Describe the peculiar features of the Swiss Executive. (Agra 1942, 1934)

Ans. The peculiar features of the Swiss Executive may be analysed under the following heads :—

A Plural or collegiate executive.

The executive in Switzerland is unique. Virtually all other countries have single executive, a king like England or a president like America or a Prime-Minister as the case may

be. By the single executive we do not mean that there is only one man entrusted with the discharge of the executive for choice. We mean that in the executive sphere one man is given comparatively more supremacy over other. In England for example the Prime Minister is the *Primus inter pares* first among the equal and so he has been called by Morley the "keystone of the Cabinet arch." In contrast to this the Swiss executive is plural or collegiate. It is so called because all the seven ministers are of equal rank or status. No one is supreme and nobody is subordinate to one another. It, in fact has no chief or Prime Minister. The President here does not select his chain of Ministers as the English Prime Minister does and so he has no authority over them.

A healthy combination of responsibility and permanence.

The Swiss executive is responsible to the legislature. It is controlled by the latter through interpellations. It must obey all the resolutions passed by the two chambers of the legislature. But if the Councillors find themselves as out voting on any matter they do not resign as the Ministers do in France or in England. They merely pocket their pride and obey the will of the legislature with as good a grace as they can. The Swiss people see no reason why ministers whose general work is satisfactory should be turned out of office because they and the legislature are of a different opinion on some single proposition. Thus the Swiss executive is permanently in office for four years. It is in this way that the responsibility of the English Cabinet system and the permanence of the American system are combined in Switzerland.

A parliamentary and non-parliamentary executive.

Thus the Swiss system is at once a parliamentary and a non-parliamentary executive. This is parliamentary in so far as (a) its members are chosen by and in practice from the legislature (b) Its members have the right of being present in the legislature and take part in its decision and introduce the bills (c) It carries out the bill of the

legislature. It is a non parliamentary executive because its members are not the members of the legislature because when chosen as minister they resign their seats in the legislature and (b) their term of office is fixed because the federal executive has no power to dismiss them out of office. Thus it is at once parliamentary or non-parliamentary.

Its non-partisan character.

Its other striking feature is that it stands outside the parties and does not speak for the party policy alone. In fact it does not determine the policy at all. Determination of policy belong to the Assembly, though in practice the Council by its knowledge and experience exerts much influence in the formation of the policy. When its action is disapproved by the Assembly it does not mean a vote of censure against it. The Council changes its course of action according to the desire of the Assembly and continues to remain in office so that, in the words of Bryce the executive council may be said to lead as well as to follow. It is a guide as well as an instrument and the Swiss executive thus is not the mouth piece of the majority but the best servant of the nation and country.

The internal relations of the councillors.

This non-partisan character becomes all the more striking when we turn to its another peculiar feature which distinguishes it from all other executives of the world. It is this that although the executive council acts as one body, differences in opinion are permitted and allowed to be known. Its members often speak on opposite sides in the legislature without offending their party. Thus the Swiss system provides, as Bryce had stated, "a body which is able not only to influence and advice the ruling assembly without lessening its responsibility to the citizen but which because it is non partisan, can mediate, should need arise, between contending parties adjusting difficulties and arranging compromises in a spirit of consolation." The executive Council thus embodies in itself a cohesive force in Switzerland.

It is for these reasons that Bryce stated, "the federal council is one of the institution in Switzerland that best deserve study."

Q. 5. Analyse the composition and functions of the Swiss Federal Legislature.

Ans. The Swiss Federal Legislature is called the Federal Assembly and it consists of two houses-the Council of States and the National Council. Council of States is the Upper House and is composed of 44 members, two from each full canton and one from each half canton. In this respect it resembles the Senate of Australia and U. S. A. The Swiss Constitution does not determine the method of electing members nor does it fix their qualifications. All this is left for the Cantons to decide and there is no uniformity in such rules. In some Cantons members of the Council of States are elected by the people and in other states they are elected by the Cantonal legislature. Their term of office varies from one to four years. A three year term, however, is becoming the rule. The Cantons are at liberty to recall any of their representatives and others instead.

The Council elects its own President and Vice-President. But members belonging to the same Cantons cannot be elected to both these offices for the same session, "nor can any of these officers be elected from representatives of the same cantons for two consecutive sessions. As a convention the Vice-President of one year is the President for the next year.

The lower chamber in Switzerland is called the National Council. It is a popular house composed of 187 members, elected for four years by proportional representation. The number of the members varies from census to census, as the constitution provides that there being one deputy for each 22,000. Since the executive is not responsible to the legislature, it cannot accordingly be dissolved and elections take place, after every four years, on the last Sunday in October. "Every citizen of the

Republic, who has entered on his twenty first year is entitled to vote; and any voter, not a clergyman, may be elected a deputy." No man can at the same time be a member of both the Houses of the Federal Assembly.

The sessions of the National Council are held regularly four times a year, in March, June, September and December. The House chooses its own President and Vice-President for each Session. All Sessions held in one year are treated as one session. The President exercises a casting vote in case of a tie. "The President of the National Council is far from being as powerful as the Speaker of the American House of Representatives," it may, however, be maintained that "the former office is considered a great prize by ambitious parliamentary leaders, and those men who have been so fortunate as to attain it, enjoy a special prestige among their party associates. The same is true of the corresponding office in the Council of States."

Powers of the Federal Legislature.

Both the houses enjoy co-equal powers. But this is all in theory. In actual practice, the upper house has tended to occupy a secondary position. However, it goes to the credit of the Swiss legislators that disputes between the two chambers have been rare.

The powers of the Federal Assembly "extend into every field of Government" subject to the rights reserved to the people and to the Cantons. It means that the legislature so long it retains the confidence of the people is all powerful. There is no judicial veto on its decisions. These powers may be summarised as follows :—

1. It legislates on all federal subjects, enacts the budget, levies taxes as provided for in the Constitution.
2. The Assembly is vested with a general supervision of Federal administration and of the Federal Court.
3. The National Assembly organizes the Federal Service, providing for the creation of all necessary depart-

ments or offices and for the appointment and pay of all Federal Officers.

4. It elects the members of the Federal Council, the Federal Tribunal the Chancellor and the Commander-in-Chief of the Federal army.

5. The consent of the National Assembly is essential for treaties with foreign states, for the declaration of war and the conclusion of peace.

6. It takes the necessary measures for maintaining the neutrality and external safety of Switzerland.

7. It passes all such measures which are necessary to fulfil the federal guarantee of the Cantonal Constitutions, and "deciding, upon appeal from the Federal Council, the validity of agreements between the Cantons or between a canton and a foreign power."

8. The Assembly revises the Constitution subject to its approval by the people.

The powers of the National Assembly are the negation of Montesquieu's theory of the separation of powers, because it exercises jurisdiction over the executive, legislative and judicial functions. This can be accounted for the reason that the executive in Switzerland is not responsible to the legislature.

Both the Chambers hold separate Sessions, but they meet in Joint Sessions when (1) Members of the Federal Council, the Chancellor, the Judges of the Federal Court, the Commander-in-Chief and other high officials are to be elected, (2) when there is a conflict of jurisdiction between the federal and some other authority, (3) for the grant of pardon.

Viscount Bryce holds a very high opinion about the Swiss Legislators. The average member in the Swiss legislature, according to Bryce "is solid, shrewd, unemotional or at any rate indisposed to reveal his emotions. He takes a practical Common Sense and what may be

called middle—class business view of questions, being less prone than is the German to recur to theoretical first principles or than is a Frenchman to be dazzled by glittering phrases. As a result of these qualities of the Swiss legislators the National Assembly “has been the most business like legislative body in the world. doing its work quietly and thinking of little else, There are few set debates and still fewer set speeches. Rhetoric is almost unknown.....Speakers are not interrupted and rarely applauded.....In the National Council members speak standing, in the Council of States from their seats.”

Q. 6. Discuss with reference to the Swiss Constitution the working of direct democracy.

(Allahabad 1947, 1944, 1941; Nagpur 1944; Agra 1951, 1942, 1936; Patna 1938).

Ans. Switzerland is the classical example of direct democracy. “Nothing in the Swiss arrangement” according to Bryce, “is more instructive to the student of democracy, for it opens a window into the soul of the multitude. Their thought and feelings are seen directly, not refracted through the medium of elected bodies.” The two most important institutions of direct democracy, in this country are the Referendum and the initiative.

Referendum.

By referendum we mean reference to the people, for their approval or rejection, of a law passed by the legislature. Referendum, in Switzerland, is of two kinds :— (i) Compulsory and (ii) optional. When every law passed by the legislature must necessarily be submitted to the people for their approval, it is a compulsory referendum. It is an optional referendum when a bill passed by the legislature is to be submitted to the people for their approval when a demand to that effect is made by a prescribed number of people.

Referendum in Switzerland is compulsory or obligatory for all Constitutional amendments. It is optional

in respect of all ordinary laws. 30,000 Swiss citizens may demand a referendum by submitting a signed petition. Eight Cantons may also demand a referendum. The time within which referendum may be demanded is 90 days from the time of the passage of the bill in the Federal legislature. "In practice treaties, the annual budget, money subventions for local improvement and decisions upon concrete questions submitted to the legislature, such as cases of conflict of authority, approval of Canton Constitutions etc. are exempted from the referendum."

Referendum exists in all the Cantons for amendment in the Cantonal Constitutions. In eight of the Cantons all laws and resolutions are subject to compulsory referendum.

Initiative.

Initiative is a device by virtue of which the people themselves initiate legislation, i e. the people themselves may directly submit proposals for legislation. There are two types of initiative in Switzerland—the formulated and unformulated. A formulated initiative means that a specified number of voters submit a complete bill to the legislature to be submitted to a referendum. In the case of unformulated initiative that a specified number of voters submit a general proposal to the legislature. If the legislature approves of it, it then formulates a bill embodying the proposal as initiated by the people and then submits it to a referendum. If the legislature disapproves such a proposal then it is submitted to the referendum of the people. If at a referendum the proposal is approved by the majority of the voters, the legislature then formulates a bill embodying the proposal and then submits it to a second Referendum.

The Initiative is in use in the Federation for Constitutional laws both in the formulated and unformulated forms. It is not used in respect of ordinary laws in the Federation. In all Cantons, except one, initiative is used for amendments

of the Cantonal Constitutions. Barring three, it is used in all other Cantons for ordinary legislation.

Both these methods of direct democracy viz. referendum and initiative are emphatically admired as political devices of great educational and ethical value. It is further argued that direct democracy is the real manifestation of the will of the people and is also free from the evils of the party system. Direct democracy makes every citizen a partner in the State and it tends to strengthen their patriotism. It is also less expensive a device. Nor is there any apprehension of the high-handedness of the majority party. Direct legislation writes Bryce, "helps the legislature to keep in touch with the people at other times than at general election and in some respects in better touch for it gives the voters an opportunity of declaring their views on serious issues apart from the destructing or distorting influence of party spirit." Direct legislation, finally, is the best barometer of public opinion and it is the best means of solving deadlocks between the two houses of the legislature.

There are many writers like Prof. Laski and Dr. Finer who press an unfavourable opinion about the methods of direct democracy. It is maintained that neither there is any educative nor ethical value in it. The voters do not possess, it is argued, sufficient political sense to decide complicated questions referred to them for their approval. Moreover, the voters seldom find time and interest, because frequent participation in public affairs develops in them "electoral fatigue". The decisions arrived at are invariably that of a minority. The proportion of the people who vote at a referendum is less than that for ordinary elections, "suggesting that people are more willing and qualified to choose between men than between laws." Direct legislation tends to weaken and paralyse the sense of responsibility under which Legislative Assemblies do their work. When the representatives know that their efforts are liable to review and might ultimately be reversed they find little interest in the work. If they at all do find some interest it is devoid of all responsibility. It consequently under-

mines the prestige of the legislative Assemblies and react on the quality of membership.

It is also not true to assert that direct legislation lessens the evils of the party system. As a matter of fact political parties become more active and demagogy is encouraged when frequent votes are to be taken. Professional politicians, thus create a great political wedge in the country which is detrimental to the national unity. It may also be said that more often sectional and capricious measures are initiated after fulfilling the necessary requirements.

But Bryce is of the opinion that while Swiss are well qualified by their intelligence and knowledge of public affairs, it is difficult to say that direct democracy had unqualified success in other countries as well. "It is certain in Switzerland the initiative and referendum have not caused the breaking up of political organization. On the other hand they have increased somewhat the influence of minority party." The system of direct democracy in this country has become, "vital and free functioning part of the Swiss political organism." While analysing the causes of success Dubs says, "you may find elsewhere greater political achievements, but assuredly in no country will you meet so many good citizens of independent opinion and sound practical judgment; nowhere so great a number of public men who succeed in fulfilling their functions in minor spheres with dignity and skill; nowhere so large a proportion of persons who, out side their daily round, interest themselves so keenly in the welfare and in the difficulties of their fellow citizens."

Q. 7. Describe the system of amending the Swiss Constitution.

Ans. The Constitution of Switzerland is federal in character. It is a federation of 19 Cantons and six half Cantons. Each Canton has the right to send two members to the Council of State, while each of the six half Cantons send only one member to this body. The Swiss Constitution is rigid in character because it cannot be amended

through the ordinary process of law making. The following special procedure has been provided for amending the Swiss Constitution :—

At the outset it has to be noted that the Swiss Constitution is the only constitution which provides a machinery both for its complete or partial amendments.

(a) Initiation of a complete revision.

According to the Article 20 of the Swiss Constitution the proposal for the total revision of the Constitution may be initiated in either of the two following ways :—

(a) by either Chamber of the Federal Assembly or

(b) by 50000 Swiss voters.

If this resolution for a total revision is initiated by one chamber of the Legislature and rejected by the other Chamber, or if the proposal comes from 5000 voters, it has to be submitted to the people who are thus called upon to decide whether the Constitution should be revised completely or not. If in either case the people decide for a revision, there shall take place fresh elections of both the chambers of Legislature for the purpose of undertaking the revision. It has to be noted here that if both the Chambers of the Legislature agree on the issue of the total revision, the question of revision is not to be referred to the people.

Initiation of a partial revision

The proposal for the partial revision of the Constitution may be initiated in one of the following two ways:—

(a) In the first place it may be initiated by 5000 Swiss voters either by the expression of a simple draft in favour of such a revision or by the presentation of a complete draft of the amendment so desired. The former is known as unformulated initiative and the latter formulated initiative. If the proposal of a partial revision comes from the said number of people in an unformulated form, the Council of State proceeds to

draft the amendment after the Federal Assembly has approved of this demand for revision in its broad outline and underlying principles. But if the Assembly disapproves of the proposal, the question whether there should be a partial revision of the Constitution or not is referred to the people. When a demand is presented by the people as a formulated bill complete in all details, the Federal Legislature must submit it for the approval of the people and Cantons. If the Federal Assembly does not approve of this formulated demand, it may recommend its rejection to the people or frame a bill of its own as a counter proposal. The assembly may submit to the people its own bill or proposal for its rejection at the same time as the bill presented by popular initiative.

3. (b) In the second place an amendment to the Constitution for its partial revision may be proposed, by either or both branches of the Federal Assembly, acting separately. Again if such a proposal emanates from one chamber and is not agreed to by the other, the proposal itself is referred to the people.

Thus in Switzerland both the people and the Legislature have the right to propose an amendment.

Obligatory Referendum.

4. In either of the above cases the amendment (whether partial or total) must be referred to the people. It is considered to be passed only when it has been voted for by a majority of the people in a majority of Cantons and also by majority of the people voting in all Cantons. It has to be noted here that in reckoning the majority the vote of a full Canton is counted as one and that of a half-Canton as half. The amendment in Switzerland thus must be accepted by the people of at least $11\frac{1}{2}$ Cantons and by the majority of the people of the whole confederation. Thus ultimately it is the people who act as a Constituent Assembly in Switzerland.

Constitution of the Union of South Africa

CONSTITUTION OF THE UNION OF SOUTH AFRICA

Q. 1. Give a brief retrospect of the Constitution of the Union of South Africa. *(Agra 1942).*

Ans. The Constitution of the Union of the South Africa is a strange mixture of a federation and a unitary form of government. In this constitutional anomaly one has to go back and study the tendencies which prompted the Union of South Africa.

The Dutch were the earliest European colonisers of South Africa who founded the Cape Colony. In 1814 Britishers began to step in the Cape Colony which resulted subsequently in an influx of the British Settlers. This considerably helped to increase the British element in the Cape Colony and the colony soon became industrialized. The Dutch, driven more or less to the position of serfdom, founded the Orange River Colony which was also annexed by the British in 1900. They established the third Boer Republic, the Transvaal which met the same fate as the Orange River Colony. After the Boer War, the Dutch having been defeated, all these Colonies, including Natal, were ceded to England.

All the four colonies continued to have their separate administration, isolated and unconnected from one another, under the directions of the Colonial office. Apart from the racial, linguistic, historical and religious differences between them, the acute divergence on economic and financial matters created problems of insurmountable magnitude. The "rate war" started by the railway systems of the different colonies and the existence of fundamental differences in their tariff policies further accentuated the problem. Then, "the colonies had considerable dis-

crepencies, in their respective treatment of the Native population. As the proportion of the white population to the number of the natives was 1 to 4, there was a serious apprehension of the divergent native policies of the four colonies resulting in a grave danger to the whole of the country."

In these conflicts and economic turmoils, it was realized on all sides that Union of all these colonies was the only remedy to skip over all those ills, unsuccessful attempts to such a union were made from time to time. In June 1907, the Earl of Selbourne, High Commissioner in South Africa expressed an opinion to the Cape Governor that "The Union of a divided country is seldom a thing which can be postponed to a more convenient season. Divisions left alone tend to emphasize and perpetuate themselves day by day until really firm Union becomes firm." In 1908 the Inter Colonial Conference endorsed this "idea" and resolved that a convention of the delegates of the colonies be convened to prepare a draft Constitution. The legislatures of the four colonies, accordingly appointed their delegates and these thirty three delegates met in a convention on 12th Oct. 1908. They held from the very beginning their proceedings in secret and subsequently the convention moved to Cape Town. It was a uphill task to surmount the racial differences, the economic controversies and the differing systems of laws. But the delegates ultimately braved through all these odds and a draft Constitution was prepared and submitted to the Colonial parliaments.

The Transvaal Parliament adopted it though Orange River Colony suggested certain minor amendments. But Cape Colony suggested certain complicated amendments and the amendments suggested by Natal virtually amounted to obstruct the work of the Convention. The Convention met again at Bloemfontein to consider all these amendments and after a few changes in the draft it was finally signed by the delegates on 11th May 1909. The delegates then went over to London to get the Draft Constitution accepted

UNION OF S. AFRICA

by the English Parliament which was passed as the Union of South Africa Act, on September 20, 1909. On 31st May, 1910, "the four colonies were formally united," and came to be known as the Union of South Africa.

Q. 2. Analyse the salient features of the Constitution of Union of South Africa and compare it with Canada. (Agra 1939).

Ans. The Union of South Africa is governed by the Act of 1909 which combined the four colonies. The preamble states that "the several British Colonies therein be united under one Government in a legislative union under the Crown of Great Britain and Ireland." This "Legislative Union" is a curious mixture of federal and unitary elements but all told the union is generally unitary in spirit.

Federal Elements.

1. The Provinces have been given certain subjects of administration and the provincial legislatures can make laws or ordinances as the laws are there called. The provincial subjects are direct taxation, education, other than higher education, agriculture, hospitals, charitable and municipal institutions etc. In the preamble itself there is a mention of making "provision for the establishment of provinces with powers of legislation and administration in local matters and in such other matters as may be specially reserved for provincial legislation and administration."

2. The provinces are given equal representation in the centre of the Union viz, eight members each.

3. In the constitution of the federal cabinet all care is taken to give representation, as far as practical, to all provinces.

4. The provinces have also "received recognition in the allocation of federal business. Cape Town has been fixed as the seat of legislature, Pretoria as that of the executive Government and Bloempontoir that of the Supreme Court.

5. Dutch and English have both been recognized as official languages in which all official records are printed.

Unitary Elements.

In the federation there is a division of powers between the federating units and the newly created centre, both remaining independent within their respective jurisdiction. In a Unitary Government the units do not enjoy any inherent and independent power. Their power is a delegated one to be exercised at the option of the centre. It is true that in the Union of South Africa the provinces have been given "powers of legislation and administration in local matters and in such other matters as may be specially reserved for provincial legislation and administration, "but these are :

- (i) Subject to the assent of Governor-General.
- (ii) Provided such laws are not inconsistent with the Acts of the Union Parliament.
- (iii) The Union Parliament may also pass laws on the subjects within the provincial sphere and the precedence would be given to the Union laws over the prevailing laws of the provinces.

2. The Chief Executive head of the Provinces, who is styled as Administrator, is appointed by the Governor-General in Council, and "the conditions of appointment, tenure of office and retirement of public officers within the Provinces may be regulated by the Union Parliament.

3. The Union Parliament can amend the Constitution with the exception of certain provisions of the Act, in the ordinary method of legislation as if an ordinary law is being made or amended.

4. The exceptions themselves are subject to amendment by the Parliament provided the amendment is passed by both Houses of Parliament sitting together, and at the third reading is agreed to by not less than two-thirds of the total number of members of both Houses.

5. Legally, the Union Parliament is competent to abolish the provincial legislatures or reduce their power. Even the provision in the Act of 1909 that such an abolition or reduction should be reserved for the King's pleasure was repealed in 1934. This was, however, remedied by passing of an Act No. 45 of 1934, that the Union Parliament was not to abolish any Provincial law or abridge their powers except on the petition to Parliament of the Council affected.

Comparison with Canada.

1. In both countries—South Africa and Canada, provinces have limited jurisdiction.

2. But unlike South Africa Canadian Provinces are autonomous units whose constitutions cannot be amended by the federal legislature.

3. The heads of the Provincial executive in both the countries are appointed by the Governor-General.

4. In Canada, it is not necessary that the Provincial laws should receive for their validity the assent of the Governor-General.

5. The Governor-Generals of the two Dominions can of course veto the Provincial legislation, but this has come into abeyance in Canada now.

6. The Dominion Parliament of Canada cannot pass legislation on the Provincial subjects, whereas in South Africa it is possible.

7. The power and position of the Canadian Provinces has now considerably increased as a result of the established conventions and judicial decisions.

Conclusion.

From the outline of the above broad facts it shall be clear that the Constitution of South Africa is a curious admixture of federal and Unitary elements. But federal elements pale down to insignificance in the dominating

presence of Unitary tendencies. A constitution which does not accede autonomy to its units within their own sphere of activity and gives to the units only delegated powers cannot claim to be a federation even by name. In South Africa the constitution is not even the Custodian of the State rights and their integrity. "their supremacy of the Constitution, as distinguished from that of the Central Government," is an essential feature of a federation. This is not so in South Africa. Constitution is dependent upon the freaks of the Union Parliament.

Q. 3. Briefly describe the Constitution and powers of both the houses of Parliament in the Union of South Africa.

Ans. The Parliament of the Union is bicameral. The upper house is known as the Senate and the lower chamber is called the House of Assembly. The Constitution of the Union gives to the federal Parliament the competence to supersede the Provincial legislation, there is, therefore, practically no limit over the powers of the Parliament. The Parliament possesses "full power to make laws for the peace, order and good government of the Union." In the United States of America, Canada and Australia, on the other hand, the provinces have their own well-defined sphere of jurisdiction.

Senate.

The Senate consists of 40 members, each province returning 8 members. This accounts for the equality in representation of the units. The remaining 8 members are nominated by the Governor-General. Four out of these nominated members are selected "on the ground mainly of their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants and wishes of the coloured races in South Africa." The thirty-two Senators are elected by a joint session of the members of the Provincial Council and members of the Assembly for the Province concerned, Presided over by

the Administrator, and voting on the system of proportional representation with a single transferable vote. The necessary qualifications for the Senators are:—that he must be at least thirty years of age; a British subject of European descent and resident in the Union for five years. For the elected members it is also essential that he must own immovable property within the Union valued at 'not less than five hundred pounds over and above any special mortgages thereon.'

The normal term of the Senate is ten years unless dissolved by the Governor-General earlier. It is, therefore, not a continuous body like the Senate of U. S. A. and Australia. Nor is it the true barometer of the public. In the first place its members are indirectly elected as well as nominated. In its composition, therefore, the Senate of the Union of South Africa is more undemocratic. Secondly, the term of office being ten years, Senators lag behind the time and, accordingly, they are not the index of the public opinion. Ten years is a sufficiently long time to adequately represent public opinion.

Twelve Senators constitute a quorum for the meetings of the House, the members elect their own President. All questions are decided by a majority vote and the President casts his vote only in the case of a tie.

The powers of the Senate are co-equal with that of the House of Assembly except in the case of money bills. All money bills must originate in the lower chamber. It may not amend money bills, nor any bill so as to increase any proposed charges or burden on the people. The power of the Senate in respect to money bills are, therefore, inferior, than those of the House of Assembly.

In case of a deadlock it is provided that if a bill, other than a money bill, is passed by the Assembly in two successive sessions and is rejected by the Senate both the times, the Governor-General may convene a joint session of both the houses and if the bill secures an absolute majority of votes of the members present, the bill is

deemed to have been passed. When the disagreement relates to the money bills the Governor-General may summon a joint sitting of both the houses "during the same session in which the Senate so rejects or fails to pass such bill." Whenever the deadlock is to be resolved it is always the will of the House of the Assembly that prevails, because of the number of the members of the House is four times than the Senate. The Senate becomes absolutely powerless in a joint session, as it contains only 40 members against 153 members of the Assembly.

The Senate is accordingly, nothing more than a house of review. In the opinion of Dr, Keith, the Senate has proved to be of no great importance because "It was not intended to be more than a house of review, and in that capacity it serves fairly well. But it does not attract talent."

The House of Assembly.

The House of Assembly is a lower Chamber of the Parliament and consists of 150 members. The seats are distributed since 1946 thus : Cape of Good Hope 55, Natal 16, the Transvaal 66 and Orange Free State 13. The right to vote for these seats is given to all adult white people, without any property or other qualifications. The right to vote for three seats reserved for Africans is, in the Cape of Good Hope, given to all male Africans, who are able to read and write their names, address and occupation, "who have for twelve months occupied property worth £ 75. in the registration district, or who have resided for three months in the Cape and earn £ 50/- a year. " The election is held in single member Constituencies. Every member of the House of Assembly must be a qualified voter for the Assembly a resident of not less than five years within the Union, and a British subject of European descent.

The normal life of the Assembly is five years unless dissolved by the Governor General earlier. The Assembly elects one of its members as Speaker. At least thirty members constitute a quorum. All questions in the

Assembly are decided by a majority vote, the Speaker voting only in the case of a tie.

No one can be a member of both the Houses at the same time. But a minister, who is not a member of one house may also speak in the other without the power to vote therein. Every member of the Senate or Assembly gets an annual allowance and enjoys all the usual privileges and immunities during the period of his membership. The Assembly passes its own rules of procedure. Both houses enjoy co-equal powers except that money bills must originate in the Assembly. When the Bills pass through both the houses of Parliament it must receive the assent of the Governor-General before it becomes a law. The Governor-General may recommend amendments to any legislative measure passed by the parliament. The Governor General may also reserve any measure for the King's pleasure which must be expressed within a year.

Q. 4. Briefly describe the constitution of the Supreme Court in the Union of South Africa.

Ans. The Supreme Court which consists of a Chief Justice and four judges of appeal is at the top of judiciary. There are two divisions - Provincial divisions, one in each of the Provinces, and an Appellate judicial system in the union division. Below each Provincial Supreme Court there are circuit and magisterial courts in the provinces. The judges are appointed by the Governor-General and they hold office during good behaviour. Nor the salaries of the judges can be diminished. This accounts for the independence of the judiciary.

The appellate Division of the Supreme Court is the highest Court of appeal for the whole union and sits at Bloempontoir the headquarters of the Orange Free State. Ordinarily no appeal from the Supreme Court lies with the Privy Council, "but the King continues to exercise the Royal prerogative to grant special leave for preferring such appeals.

The Provincial Supreme Courts, besides exercising jurisdiction in all provincial matters exercise jurisdiction in the following matters as well :—

1. In which the Government of the union or a person suing or being sued on behalf of such Government is a party ;
2. In which the validity of any Provincial ordinance shall come into operation.
3. In matters affecting elections to the Assembly or the provincial councils.

The Supreme Court of the Union frames rules for the conduct of procedure in all superior and other provincial courts. The orders of the Supreme Court have full force and effect in every province. The process of the court runs throughout the Union. But the Supreme Court does not possess any power to interpret the constitution and adjudging the validity of Union legislation.

Constitution of Australia

THE CONSTITUTION OF AUSTRALIA

Q. 1. Describe the nature and characteristics of Australian Federation. *(Agra 1943).*

Ans. The federation of Australia is the result of the Commonwealth of Australian Constitution Act, passed by the British Parliament in 1900 and it comprises of six states, namely, New South Wales, Tasmania, Victoria, Queensland, South Australia and Western Australia. Before the passing of the Act of 1900, all these States were self-governing autonomous units without any common link with one another. Each of these States pursued its own fiscal policy although the nature of their existence demanded a concerted policy. This led to innumerable inconveniences. Likewise there was no common defence policy. In 1893, Australia faced a financial crisis which proved a blessing in disguise as it amply showed the urgent necessity of some kind of close relationship between the colonies. The idea of a common defence further cemented the ties of Union which ultimately culminated into the passage of the aforesaid Act and the federal Constitution came into operation on the first day of January.

The authors of the Australian Constitution had before them the working of three federal Constitution viz. United States of America, Switzerland and Canada. These three models offered admirable examples to the Australians, in solving their own Constitutional problems. Before federating all these States were all independent in their internal administration and being very reluctant to give up their autonomy and consequently more principles of the American Constitution were adopted. Then, unlike Canada and Switzerland but like U. S. A., Australia had no linguistic, racial or religious differences to tackle with.

their will to federate was entirely an economic and defensive one.

Here are some of the main features of the Australian Constitution.

1. It is a written constitution. But like all other written Constitutions it embraces many conventions.

2. Although the Australian Constitution is the result of the enactment of the British Parliament, but in reality it derives its authority from the people of the federating colonies. The Secretary of State for Colonies Joseph Chamberlain, while introducing the Commonwealth of Australia Bill in the English Parliament maintained "the Bill, which is the result of the careful and prolonged labours of the ablest statesmen in Australia, enables that great island continent to enter at once the widening circle of English speaking nations" and it goes to the Credit of the British Government and the Parliament that they accepted the draft constitution almost in toto.

3. The Union of Australia establishes a Commonwealth, "a phrase that connotes a more democratic policy than a mere federation".

4. It is a point of weakness in a federation that the federating units may wish to secede subsequently. But the Union of Australia was declared to be indissoluble from the very outset. The preamble of the Constitution maintains, "the people of.....humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland".

5. The Australian Constitution is a rigid one. All Constitutional amendments are required to pass by an absolute majority in each house of the Parliament and then it is to be submitted in each State to the electors qualified to vote for the election of members to the House of Representatives. (If any such amendment is passed by one House of the Parliament and rejected by the other but

passed a second time by the initiating House after an interval of three months, the Governor-General may refer the amendment so passed to the electors of the House of Representatives. Such an amendment becomes a law when it is accepted by a majority of electors in a majority of States and by a majority of the total number of votes.

The Constitution further provides that all amendments intending to diminish the proportionate representation of any state in either House of the Parliament, or the minimum number of representatives of a state in the House of Representatives, or when alterations are desired to be made in the territorial limits of any State, cannot become law unless the majority of the electors voting in that State agree to it.

6. In the division of powers there is a sharp contrast with the Canadian Constitution but a close similarity to the United States of America. In the first place certain specified powers have been given to the Centre whereas the residuary powers rest with the States. Then there are the concurrent powers and finally there are certain prohibitions on the Central Government and those of the States.

7. Australia has adopted the British model of Parliamentary Government. Moreover the Executive heads both at the Centre and the States are not elected by the people. They are appointed by the King.

8. All the six states have equality of representation in the Senate and they are elected by the people. It is accordingly, most democratic of all the modern constitution.

9. There is the High Court of Australia which possess the power of interpreting the constitution. As a rule there is no appeal from the High Court to the Privy Council in matters requiring the interpretation of the Constitution except when the High Court grants a certificate to the effect. But in reality the High Court has refused to grant this Certificate.

10. The Australian Constitution does not contain any reference to the Bill of Rights.

Q. 2. Briefly describe the working of the Central Executive in Australia.

Ans. The Central Executive in Australia consists of the Governor General as the representative of the King and a Council of Ministers. The Governor-General is appointed by the King, on the recommendations of the Dominions Government, for a period of five years. Even Australians have been appointed to this High office. Since Australia has adopted the parliamentary form of Government the powers of the Australian Governor-General, therefore, lie "on the cushion". Theoretically there is no sphere of administration where the mystic hand of the Governor-General is not to be found. Legally his authority is all embracing in all the branches of administration and there is nothing which he cannot do. But under a responsible form of Government there is a difference between theory and practice. The powers of the Governor-General are, accordingly, nominal. Like the English King all his actions are those of his ministers. His position and influence, as a matter of fact, is not so great as the English King. Being a representative of the King there is no halo of royalty round his personality. He is appointed for a term of five years and must ; consequently migrate to England or to the ranks of an ordinary citizen if a national of Australia, after the expiry of his term of office. In the absence of perpetuity of office there is no solemnity in the position of the Governor-General, Nor does he wield, like the English King any "unifying, dignifying and stabilising influence."

The Governor-General of Australia is often described as the prototype of his counterpart in Canada. But the authority of the former is even less than that of the latter. Here are the points of difference—

1. The power of appointing and dismissing all officers of the Executive Government (excluding the ministers) in Australia are vested in the Governor-General in Council.

In Canada these powers are vested in the Governor-General.

2. The Provincial Lieutenant Governors in Canada are appointed by the Governor-General. In Australia the Governor-General has no power as such. Their appointment is vested in the King.

3. The Australian Governor-General enjoys no power to veto the laws passed by the State legislature, whereas the Canadian Governor-General possesses the power to veto laws passed by the Provincial Legislature.

The Cabinet.

The Constitution of Australia, like that of Canada, provides for a Federal Executive Council "to advise the Governor-General in the Government of Commonwealth" and the members of the Executive Council are "chosen and summoned by the Governor-General and sworn as Executive Councillors." They hold office according to the letter of the law, during the pleasure of the Governor-General. But here, too, a legal truth is a political untruth. In practice the Governor-General summons the leader of the majority party in the House of Representatives, appoints him as Prime Minister and the formation of the ministry is entrusted to him. The Prime Minister after consulting the important members of his party selects his colleagues from his own party who are then formally appointed by the Governor-General as members of his Executive Council.

The Prime Minister may have any department and distribute the portfolios amongst his colleagues in any manner he likes the best. Ministers without portfolios may also be appointed. But in the formation of the Cabinet the Prime Minister has to pay due regard to the wishes of several states and selection of the ministers is made in such a manner as to include at least one member from each State.

According to the recognised practice of a Parliamentary Government the real executive power rests with the Cabinet. The Cabinet is the national policy formulating body and guides the legislature. For its policy the cabinet is responsible to the House of Representatives and is wedded to the principle of joint responsibility, although in theory the ministers hold office during the pleasure of the Governor-General. The Governor-General does not even attend the meetings of the Cabinet. The Prime Minister presides over these meetings and as a leader of the party in power he guides its general policy. The Governor-General is only a constitutional head whose office is titular and, thus, exercises nominal powers. The Cabinet in Australia, as a matter of fact, has assumed so much importance and power that in accordance with the well established Constitutional practices in that country even the appointment of the Governor General by the King is made on the recommendations of the Cabinet.

Q. 3. Give an analysis of the Constitution and powers of the Australian Senate. (*Punjab 1935*).

Ans. The Senate in Australia embodies the federal principle of equality of representation of States, and accordingly is composed of 60 members 10 from each state. The Senators are elected for a term of six years, half retiring every three years. The House is, thus, a continuous body. Members are elected by the people, each state voting as an undivided Constituency on the system of preferential voting. Any one who is above 21 years of age, if a natural born subject or naturalized for at least five years, and has resided within the Commonwealth of Australia is eligible for election. The House chooses its own president and one-third Senators form the quorum. All questions are decided by a majority vote. The President has always a vote, but in case of equality of votes, the question is decided in the negative.

Powers of the Senate.

The Powers of the Senate are co-equal with the House of Representatives except the money bills which must be

introduced in the lower house. The Senate has no power to amend the money bills. It can outright reject them or return them to the lower house with due suggestions of amendments for consideration. In case of a deadlock between the two Houses, it is provided that in case a bill is rejected twice, with an interval of three months by the Senate, the Governor-General may dissolve both the Houses and order for new elections. If the deadlock persists even after re-elections and the Senate again rejects the Bill, the Governor-General may summon a joint session of both the Houses. If the bill is passed by an absolute majority in the joint sitting, it is presented to the Governor-General for his assent. Such an expediency had arisen only once, in 1914.

The law of the Commonwealth is silent on the relative powers of the Senate and the House of representatives in respect of Control of the Executive. But according to the well established usage the ministry is responsible to the lower House alone and the Senate has never attempted to oust it from office.

Critical Estimate of the Senate.

The working of the Senate discloses that it has not succeeded to fulfil the expectations of the framers of the Constitution. It was intended to be a house of talented members and a revising Chamber in the real sense of the term. By giving an equal representation to the States it was hoped that the Senate would secure the interests of the States. But both the hopes have been falsified. It has not been able to attract talent as ambitious men have generally preferred the House of Representatives. It has neither exercised any moderating influence even in the ordinary legislation. Nor has loyalty to the State influenced its deliberations and divisions. Lord Bryce has explained the whole point rather cogently in his *Modern Democracies*. He says, "All the expectations and aims wherewith the Senate was created have been falsified by the event. It has not protected States interests, for those interests have come very little into question.....Neither

has it become the home of sages, for the best political talent of the nation flows to the House of Commons, where office is to be won in strenuous conflict Not having any special functions, such as the Control of appointments and of foreign policy which gives authority to American Senate, its Australian copy has proved a mere replica, and an inferior replica, of the House."

Q. 4. Describe the composition and functions of the House of Representatives.

Ans. The Lower House in Australia is known as the House of Representatives. Its existing strength is 121 members distributed according to population; New South Wales having 47, Victoria 33, Queensland 18, South Australia 10, Western Australia 8 and Tasmania 5. According to the Act of 1922, one member representing the Northern territory, has no vote except on certain specified matters. The allocation of seats amongst the States is according to their respective population. The Constitutional provisions being that (1) the number of members of the House of Representatives shall be as nearly as practicable twice the number of the Senators, and (2) no State may have less than five members. All adult persons, both males and females, are eligible to vote. A member of the House must have attained the age of 21, must be a qualified elector. He should be a born or naturalized (for five years) British subject and a resident, for at least three years, of the Commonwealth. The life of the House is for three years, unless dissolved earlier by the Governor-General on the advice of the Cabinet in accordance with the Statutory provisions and established constitutional practices.

The Speaker is elected by the members. He normally does not vote but in case of a tie he has a casting vote. The House frames its own rules of procedure. Every question in the House is decided by a majority vote.

Powers of the House. In main the powers of the House of Representatives correspond to those of the British House of Commons, subject to the following exceptions :—

1. Australia being a federation the jurisdiction of the House of Representatives is limited to the subjects enumerated by the Constitution.

2. Its power of Constitutional amendment is also limited.

3. Comparatively the House of Representatives is not so powerful as the House of Commons, because the powers enjoyed and exercised by the Australian Senate are greater than those of the House of Lords in England.

Both chambers in Australia—the Senate and the House of Representative—enjoy co-equal powers except that money bills must originate in the lower House “The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual service of the Government. The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.” All deadlocks between the two Houses are resolved according to the Constitutional provisions referred to in the last question.

The ministers are jointly responsible to the House of Representatives and remain in office so long as they retain the Confidence of the House.

While summing up the position of the House of Representatives, Viscount Bryce remarked. “The House is the Vital Centre of political life, but its vitality was impaired when the labour caucus was established, for the centre of gravity shifted to that caucus in which the labour Senators sit along with their Comrades of the House.”



Constitution of Ireland

CONSTITUTION OF THE IRISH FREE STATE (EIRE)

Q. 1. Give a brief history of the making of the constitution of Irish Free State.

Ans. The Anglo Irish Treaty of 1921, conferred the status of a Dominion on the Irish Free State, excluding the three northern countries. The Treaty of 1921 granted all the demands of the Irish Nationalists except its complete separation from the British Empire. De Valera opposed the Treaty, but William T. Cosgrave, who subsequently became Ireland's first Prime Minister under the Constitution of 1921, led his party in favour of the Treaty, Cosgrave's pro-treaty party was determined to respect the treaty and work the Constitution. New elections to the Dail were held in 1923 and Cosgrave's party returned 63 members and that of De Valera 44. The latter refused to take the oath of allegiance and remained out of the Dail continuing his fight for Irish independence outside the British Empire. Later he decided a change in his policy and his party entered the Parliament. In 1927, Cosgrave's party again, came into power, being the largest group in the Dail. De Valera's party decided to stay in the Parliament and, thereby try Constitutional methods to achieve their object.

The General elections of 1932, turned the scales against the Cosgrave party. Fianna Fail, De Valera's party, captured 72 seats out of a total of 153. Being the leader of the largest single party, De Valera decided to form the Government with the tacit help of the labour party. During the first five years of his Premiership not only did he succeed in altering some important provisions of the Constitution of 1922, but also managed to remove paragraph 2 of the introductory part of the Constitution and the words,

"Within the terms of the Scheduled Treaty." This made valid any amendment or construction of any article or articles in the constitution even though it may be repugnant to the provisions of the Scheduled Treaty.

De Valera, then prepared the draft of a new constitution which should replace the Constitution of 1922. A bill, embodying the provisions of the draft constitution was subsequently passed in by Oireachtas and then referred to the people for their approval. The plebiscite was decisively in favour of De-Valera and, thus, the Irish Republic came into existence on 29th December 1937.

Q. 2. Describe the main features of the constitution of Eire. (Agra 1940)

Ans. The main features of the constitution of Eire may be analysed under the following heads :

(1) A People's Sovereign Republic.

The preamble of the Constitution of the Irish Republic establishes the sovereignty of the people. It makes it clear that the people of Eire have adopted, enacted and given to themselves the Constitution. It begins, "We the people of Eire..... do hereby adopt, enact and give to ourselves this constitution."

Unlike Canada, Australia and South Africa, the Irish Republican Constitution of 1937, is not the handiwork of the British Parliament. It is not a gift desired by the Irish people and given by them by the British Parliament. The Constitution says, "All powers of Government—legislative, executive and judicial are derived under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the Common Good."

There is absolutely no reference to the King or British Empire in the Constitution. The Chief Executive of the Eire is the President who is elected by the people. Ireland

thus is a Republic. To add to this the new Republic of Eire is completely sovereign, independent and democratic. The Constitution itself lays down "The Irish nation hereby affirms its inalienable, indefensible, and sovereign right to choose its own form of Government, to determine its own relations with other nations, and develop its life, political, economic and cultural in accordance with its own genius and traditions."

(2) A charter of rights and duties.

It contains an elaborate Bill of Rights. The fundamental Rights have been divided into five heads:—Article 40 deals with Personal Rights, Rights of family are included in Article 41, Rights of education is to be found in Article 42, Right to property is the subject of Article 43 and the Right to religion is acceded to in Article 44.

The Constitution unflinchingly demands "fidelity to the nation! and loyalty to the State as the fundamental political duties of all citizens."

(3) Its unique organ.

The Constitution provides for an interesting organ called "The Council of States." It consists of the Prime Minister, the Deputy Prime Minister, the Chief Justice, the President of the High Court, the President of both the Houses—Dail Eireann and Seaned Eireann, the Attorney General and every person able and willing to act as a member of the Council of State and who have held any of the above offices. It may also include members nominated by the President. The number of such persons is not to exceed seven.

The powers of the Council are purely advisory, "but the President cannot perform and exercise functions and powers which he is required to perform and exercise after consultation with the Council, unless on every occasion before so doing he shall have convened a meeting of the council and the members present there at shall have been given a hearing by him."

(4) The functional democracy.

The constitution embodies, for the upper chamber, the principles of functional democracy. This principle again is not very common in the constitution of other continental countries.

(5) Supremacy of the judiciary.

There is a Supreme Court possessing both original and appellate jurisdictions. The appeal to the Privy Council has been abolished.

(6) Parliamentary pattern.

The Constitution of Eire is parliamentary in character. The President is only a figurehead. He can do what his council of Ministers want him to do.

Q. 3. How is the President of Eire elected? Estimate his powers.

Ans. The Constitution of 1937 makes a revolutionary departure from the Constitution of 1922, by abolishing the post of Governor-General and in avoiding all references to the King. Now the chief executive functionary of the State is the *President*, officially known as *Uachtaran na Eireann*.

The President is elected directly by the people for a term of seven years. His election is through a secret ballot on the system of Proportional Representation by means of a single transferable Vote. All those who are voters of the Dail are also the electors of the President. The Constitution of the Eire prescribes a limit on the Presidential's term. "A person who holds office as President shall be eligible for re-election to that office once, but only once." Any Irish citizen who has reached the age of thirty-five years is eligible for Presidential election.

Powers of the President.

The powers of the President are subject to the same limitations which are to be found in a country with the

Parliamentary Government. He exercises the Powers given to him by the Constitution on the advice of his Government, except where he is asked to act in his discretion with or in relation to the Council of State. Subject to the fundamental law, additional powers may be conferred on the President by law.

The President appoints on the nomination of the Dail the Prime Minister called the *Taoiseach*, and the latter nominates his colleagues with the Previous approval of the Dail. It is, again, on the advice of the Premier that the President accepts the resignation or dismisses any of the ministers. The Dail is also summoned and dissolved on the advice of the *Taoiseach*. But he may refuse acting in his discretion, to dissolve the same, when he is satisfied that the Prime Minister does no longer retain the confidence of the legislature. He may, at any time, in consultation with the Council of State, convene a meeting of either or both houses of the Oireachtas.

He is the Supreme Commander of the forces of the realm and all commission to officers are granted in his name. Every bill passed or deemed to have been passed by both Houses requires his signatures to become a law. All laws are promulgated in his name. It is further provided that the President, after consultation with the Council of State may communicate with the Houses of the Parliament a message or address on any matter of national or public importance. He may also address a message to the nation at any time on any matter of national or public importance, but it must have the previous approval of the Government.

The President also possesses the powers of pardon, remission or the power to commute the sentence.

For all his acts the President is not answerable either to any of the Houses or to any Court of law. He performs all his powers and functions only on the advice of his Government. Here the analogy is complete with that of the English King, but the President, unlike the king, is subject to impeachment for stated misbehaviour.

In the absence of the President, or during his permanent or temporary incapacity the functions and powers of his office are exercised by a commission consisting of the Chief Justice, in whose absence the President of the High Court, Chairman or Vice-chairman of the Dail and Chairman or Vice-Chairman of the Senate.

Q. 4. Explain the position and powers of the Prime Minister of Eire.

Ans. The actual administration of a country with a Parliamentary Government is carried on by the Cabinet. Article 28 of the Eire Constitution provides that the executive power of the State is exercised by or on the authority of the Government which shall consist of not less than seven and not more than fifteen members appointed by the President as provided for in the Constitution. The Cabinet is collectively responsible to the Dail.

The Premier or *Taoiseach* as he is called is appointed by the President on the nomination of the Dail. Other members of the ministry are appointed by the Prime Minister, subject to the previous approval of the Dail. The Prime Minister nominates his Deputy, designated as *Tansiste*, who acts for the *Taoiseach* during the latter's temporary absence. All ministers must be members of the either house of the legislature, but the Prime Minister, the Deputy Minister and the Finance ministers must necessarily be the members of the Dail. Not more than two ministers, however, can be the members of the Senate. Ministers belonging to one house have the right to attend and be heard in the other house.

The Prime Minister keeps the President informed on all matters of domestic and international policy.

The Premier resigns from his office by placing his resignation in the hands of the President, whereas other ministers hand over their resignations to the *Taoiseach* for submission to the President who acts on the advice of the former. The Premier can force the resignation from any of his colleagues at any time for reasons which seem

sufficient to him. If any member does not act according to the wishes of the Prime Minister he can advise the President for his dismissal. It is further provided that the Prime Minister resigns from his office when he ceases to command confidence of a majority in the Dail, unless on his advice the President dissolves the Dail and orders for general elections. The president is empowered to refuse to the Prime Minister such a dissolution if it appears to him that he has lost the confidence of the majority in the Dail. As it is customary in a responsible form of Government the resignation of the Prime Minister means an automatic resignation of the whole cabinet, but the Government continues in office till their successors are appointed.

“Other matters like the organization and distribution of business, Departments of State and the designation of ministers (members of the Government) in charge of Departments, the discharge of the function of a member during his absence, and remuneration of members are all regulated by law laid down by the Oireachtas.

Q. 5. Critically examine the composition and functions of Eire's Senate.

Ans. Ireland resorted to unicameralism in 1936, but the system of bicameralism was again adopted in 1937. The *Seanad Éireann* as it is called in the New Republican Constitution consists of 60 members. Out of these, eleven members are nominated by the Prime Minister, 6 are elected by the Universities of Ireland and Dublin and the remaining 43 members from five panels of candidates representing :—(1) National language and culture, Literature, Art, Education and similar interests determined by law, (2) Agriculture, Fisheries and other allied interests ; (3) Labour, both organized and unorganized ; (4) Industry and Commerce including banking, finance, accountancy, engineering and architecture ; and (5) Public administration and social Services, including voluntary social activities. All elections are held by proportional representation. Not less than five and not more than eleven members are

elected by each panel, "but provision may be made by law for direct election by a functional or vocational group or association or council of a certain number of persons assigned to each panel"

The Senate in the Eire, thus, occupies a peculiar position as regards its composition. It embodies to some extent, the principle of functional representation. In it is also found the method of partial nomination.

The life of the Senate is for seven years, unless dissolved earlier. If the Dail is dissolved, the Senate must also be dissolved within 90 days. It is a unique feature of the Irish Senate, because the upper chambers in the Dominions are not subject to dissolution. Moreover, none of them embodies the principle of functional representation.

Powers of the Senate.

The powers of the Senate are purely of a revisory nature. It is also a delaying chamber. A Bill other than a money bill may originate either in the Dail or in the Senate. All bills, other than money Bills, which originate in the Dail and pass therefrom may be amended by the Senate when the Dail considers such an amendment. A Bill initiated in and passed by the senate but amended by the Dail shall be considered in its amended form as a Bill initiated by the Dail.

The Senate must give its assent to the Bill other than money bill, passed by the Dail within 90 days. The period may be extended by mutual agreement by the two Houses. If within the prescribed period the Senate either rejects the Bill passed by the Dail or make an amendment to which the Dail does not agree, the Bill if the Dail so resolves, within 180 days after the lapse of the said prescribed period is deemed to have been passed by both Houses on the day of such resolution."

The time limit may further be restricted if the Prime Minister certifies in a written message addressed to the

President and to the Chairman of the each House that in the opinion of the Government the Bill is necessary for preserving peace and security, or that due to a state of internal or external emergency the time for the consideration of the Bill be abridged, provided the Bill does not seek to amend the constitution.

If the majority of the Senate demand that a particular Bill should not be assented to by the President, he may refer it to the referendum of the people provided that at least one third of the members of the Dail pass such a resolution, and provided that the Prime Minister does not certify the bill as urgent and to which the President consents. "A Bill is considered to have been vetoed by the people at a Referendum only if it is rejected by a majority of the votes polled and provided the votes so cast against it amount to not less than one-third of the total votes on the register, otherwise it is considered to have been approved by the people."

Money Bills.

All money bills originate in the Dail and after having passed therefrom are sent to the Senate for its consideration. The Senate may recommend changes within 21 days of the receipt of the Bill from the Dail. The Dail may reject any or all of those recommendations made by the Senate. If the Senate fails to return the Bill, either in its accepted or amended form within the period of 21 days or returns it within that period with recommendations to which the Dail does not agree, the Bill is deemed to have been passed by both the Houses of the legislature after the expiry of the prescribed 21 days. The Chairman of the Dail certifies whether the Bill is a money bill or not. His certificate is final and conclusive unless "Seanad Eireann", resolves, at a sitting at which at least thirty members are present, that the question whether the Bill is a money Bill or not be referred to a Committee of privileges consisting of equal number of members from the two Houses with a Judge of the Supreme Court as Chairman who exercises only a casting vote in case of equality of votes."

It shall, thus, appear that the powers of the Senate are to revise and delay. Its powers are even much more inferior than that of the House of Lords. But its composition is more representative and democratic than the latter. The element of functional representation gives due representation to professions and vocations an element much advocated by the Webbs in England for the representation of the House of Lords.

Q. 6. State briefly the composition of Dail Eireann. Also describe how laws are made by the legislature in Ireland ?

Ans. Since 1947, Dail Eireann consists of 147 persons elected on the basis of proportional representation by means of single transferable vote. The constituencies are fixed by law, and are assigned members at the rate of one member for not more than thirty thousand nor less than twenty thousand of the population, the same proportion being maintained for all constituencies. No constituency is to be so arranged as to be entitled to less than three members. Constituencies are to be revised at least every twelve years, but no alteration in them can effect the life of the then existing Dail. Normal life of Dail Eireann is seven years, unless sooner dissolved. This normal term of seven years may be reduced by law only. A general election for the Dail is held not later than thirty days after the dissolution of the Dail, polling being held as far as practicable, on the same day throughout the country, and the new Dail meets within thirty days of that polling day. The Chairman of Dail Eireann is automatically re-elected as a member at a general election provided by law. Dail Eireann alone exercises the right to consider receipts and expenditure estimates, but only when these are presented to it by the Government.

The Legislative procedure.

A Bill, other than a Money Bill, may originate in either House. Money Bills can originate in Dail Eireann only. Every Bill other than a money Bill initiated in and passed

by the Dail may be amended by the Seanad, and the Dail then considers such amendment. A Bill initiated in and passed by the Seanad but amended by the Dail shall be considered in its amended form as a Bill initiated in the Dail. A Bill passed by either House and accepted by the other is deemed to have been passed by both Houses.

Money Bills.

A Money Bill passed by Dail Eireann is sent to Seanad Eireann for its consideration. The latter may recommend changes within twenty-one days of its receipt from the Dail which may then reject any or all of these recommendations made by the Seanad. If, however, Seanad Eireann fails to return the Bill within twenty-one days, or returns it within that period with recommendations to which Dail Eireann does not agree, the Bill is deemed to have been passed by both Houses at the expiration of the said period of twenty-one days. Thus Seanad Eireann can at the most, delay the passing of a Money Bill into law by twenty-one days.

A Bill is a Money Bill if it deals with all or any of, the matters affecting "the imposition, repeal, remission alteration or regulation of taxation ; the imposition, for the payment of debt or other financial purposes of charges on public moneys or the variation, or repeal of any such charges ; supply ; the appropriation, receipt, custody, issue or audit of accounts of money ; the raising or guarantee of any loan or repayment thereof ; matters subordinate and incidental to these matters or any of them." The Chairman of Dail Eireann certifies a Bill to be a Money Bill, if it is such in his opinion, and this certificate is final and conclusive unless Seanad Eireann resolves, at a sitting at which not less than thirty members are present, that the question whether the Bill is a Money Bill or not be referred to a Committee of Privileges consisting of equal number of members from the two Houses with a Judge of the Supreme Court as Chairman who exercises only a casting vote in case of equality of votes.

Conflicts between the two houses ; how solved ?

A period of ninety days, beginning from the day on which a Bill, not being a Money Bill, is sent by Dail Eireann to Seanad Eireann, is prescribed within which Seanad Eireann is required to consider the Bill. This period may be increased by mutual agreement of the two Houses. If within the prescribed period Seanad Eireann rejects a Bill or passes it with amendments to which Dail Eireann does not agree, the Bill, if Dail Eireann so resolves, within one hundred and eighty days after the lapse of the said prescribed period, is deemed to have been passed by both Houses on the day of such resolution.

Article 24 makes special provision for restricting the prescribed period for consideration by Seanad Eireann of a Bill passed by Dail Eireann, if the Taoiseach certifies by messages in writing addressed to the President and to the Chairman of each House that in the opinion of the Government the Bill is necessary for preserving public peace and security, or that due to a state of internal or external emergency the time for the consideration of the Bill be abridged, provided the Bill does not seek to amend the Constitution. And if Dail Eireann resolves in favour of abridgement of the period and the President, after consultation with the Council of State, concurs, the period shall be accordingly abridged. In that case a Bill, if it is rejected by Seanad Eireann or is passed with amendment to which Dail Eireann does not agree, or is neither rejected nor passed by Seanad Eireann within that abridged period, shall be deemed to have been passed by both Houses at the expiration of that period. A law thus passed shall remain in force for a period of ninety days, unless before the expiry of this period both Houses resolve that the law does remain in force for such longer period as is specified in that resolution.

All these restrictions on the legislative powers of Seanad Eireann reduce it to the position of a revisory body which may delay but not prevent the passing of legislation.

Signature of the President.

When a Bill, other than one seeking to amend the Constitution, is passed or is deemed to have been passed by both Houses, the Taoiseach presents it to the President for his signature and promulgation by him as law, who is required to sign it not earlier than five nor later than seven days after the presentation of the Bill. But at the request of the Government, with the prior consent of Seanad Éireann, the President may sign a Bill earlier than five days.

A Bill signed by the President becomes a law on the day of signature, unless otherwise stated and is promulgated as a law by publication, by his direction, of a notice in the *Iris Oifigiúil* (the official gazette).

Any Bill, other than one containing a proposal for amending the Constitution, deemed to have been passed by both Houses shall, if a majority of the members of Seanad Éireann and one-third of the members of Dail Éireann send a joint petition to the President within four days of its passing that 'the bill contains a proposal of such national importance that the will of the people ought to be ascertained,' not be signed by him. He shall consult the Council of State and decide within ten days whether to sign and promulgate it as law or not. In the latter case, he shall communicate his decision to the Taoiseach and to the Chairman of each House. Such a Bill will become law only if within a period of eighteen months from the date of the President's decision (i) it has been approved by the people at a Referendum in accordance with section 2 of Art. 47, or (ii) it has been repassed by Dail Éireann after a dissolution and its reassembly. When it has been so approved, it shall be signed and promulgated as law by the President.

Q. 7. Describe the procedure for amending the constitution in Ireland.

Ans. Amendment of the Constitution.

With regard to the amendment of the Constitution, Article 46 says that any provision of the Constitution

"may be amended whether by way of variation, addition or repeal," in the prescribed manner. Every proposal for amendment of the Constitution must initiate in Dail Eireann as a Bill. When it has been passed or is deemed to have been passed by both Houses, it is submitted to the people by Referendum, and if, on being so submitted to the people, a majority of the votes cast at the Referendum are cast in favour of its enactment into law the proposal shall be deemed to have been duly approved by the people. It will then be signed by the President forthwith and promulgated by him as a law.

Articles 34-38 relate to the administration of justice, constitution of the courts and their respective jurisdiction, appointment of judges, and the trial of offences.

The courts consist of Court of First Instance (a High Court invested with the same powers as under the constitution of 1922 and courts of local and limited jurisdiction), and a court of final appeal (called the Supreme Court). In general the respective powers of these courts are almost the same as they enjoyed under the constitution of 1922. Two important differences are that judges of all the courts are now appointed by the President, the representative of the Crown having disappeared in the new constitution, and there is no right of appeal to His Majesty in Council. The Supreme Court is, therefore the highest judicial tribunal; its decisions are final and conclusive. In other respects the courts retain their previous status and jurisdictions. Independence of judges, their security of tenure (except their removal for stated misbehaviour on an address presented to the President by both Houses of the Oireachtas), irreducibility of their remuneration etc. are guaranteed.

Every person appointed a judge of any of the courts under the Constitution has to make and subscribe a declaration solemnly and sincerely promising and declaring in the presence of the Almighty God, faithfully and to the best of his knowledge to execute the office of Chief Justice (or as the case may be) without fear or favour,

affection or ill-will towards any man, and to uphold the Constitution and the laws. A judge who declines or neglects to make such declaration (before entering upon his office or within ten days of his appointment) is deemed to have vacated his seat.

The following matters are regulated in accordance with law viz.,

- (i) the number of judges of the Supreme Court, and of the High Court, the remuneration, age of retirement and pensions of such judges.
- (ii) the number of the judges of all other courts, and their terms of appointment, and
- (iii) the constitution and organization of the said courts, the distribution of jurisdiction and business among the said courts and judges, and all matters of procedure.

The Constitution also provides for the making of a law to prescribe the constitution, powers, jurisdiction and procedure of special courts which 'may be established by law for the trial of offences in cases where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order'. It allows the setting up of military tribunals for the trial of offences against military law committed by persons while subject to that law, "and also to deal with a state of war or armed rebellion."

Constitution of Japan

CONSTITUTION OF JAPAN

Q. 1. Give the characteristic features of the Constitution of Japan of 1889 and describe the political structure as enunciated by it.

Ans. Before we enter to discuss the essential aspects of the new Constitution of Japan (1946), it shall be worth while to examine in brief the main outlines of the old Constitution of 1889, the study of which shall perhaps make us understand better the new constitution on a comparative basis.

The Constitution of 1889.

Known as the Ito constitution, the Japanese Constitution of 1889 opens with the declaration of the rights, privileges and powers of the Emperor who under it occupied the most supreme position. The Constitution in its second chapter announced the rights and duties of the citizens—a thing that was most needed in the turbid and revolutionary era of individualism. The next five chapters of the Constitution dealt with the various legislative and administrative organs of the State. In all, there were 76 articles in the Constitution of Japan of 1889.

Written, rigid and unitary nature of the Constitution.

The 1889 constitution was a written one which clearly stated the supremacy of law and not of any law-making body. The right to introduce an amendment in the constitution was reserved with the Emperor alone and the Diet (the Legislative organ) could not be vested with the authority to initiate any constitutional amendment. The people too had no such right as to petition for it. The constitution, since its inception was never amended,

partly because the procedure of amendment was complicated, and the constitution provided far broad principles only and partly because the authority to do so rested only with the Imperial Throne.

In spite of the Constitution being written, certain "conventions" or customs came to find a prominent place in the working of the Japanese Constitution of 1889. Chief among such "conventions" include the advisory functions of the Genro (Elder Statesman), the principle of Cabinet responsibility, and the mutual cooperation of the members of the Cabinet with parliamentary parties in the Diet.

This constitution provided for a centralized system of administration in which all the powers of Government executive legislative and judicial were to be exercised, literary by the Emperor himself. There was nowhere any mention of the Local Government which was however established and administered under statutes and ordinances.

Position of the emperor.

Article III of the Constitution declared the emperor to be "Sacred and inviolable." He was above law and was almost a diety of worship of the common people. He was the head of the Empire and possessed within himself the rights of sovereignty. With the consent of the Imperial Diet, he exercised rights of Legislative nature and gave sanction to laws which were promulgated by his order. He could convoke the Diet, summon it, close and prorogue it and could dissolve the House of representatives. In case of an emergency, he could in view of the public peace and safety issue Imperial Ordinances during the recess of the Diet. He was the head of administration as well. He was the Commander-in-chief of the army and navy and could declare war and make peace and conclude treaties. Thus he held to himself the matters of foreign affairs. He could confer titles of nobility and exercised the prerogatives of granting pardon and commuting a punishment.

The Genro.

The "Genro or Elder Statesman" was an advisory body consisting of small number of the ablest and the wisest statesmen of the country. It was a rank above the cabinet and the Privy Council. Any decision once taken by the Cabinet could be averted by the Elder Statesman, whose opinion in final analysis must prevail.

The Diet.

The Diet under the Constitution of 1884, was not a very effective legislative organ, as the Cabinet decisions and policies were always supported by the Diet which consisted of parties that had no definite party platforms as distinguished from one another. The actions of the cabinet were, however, subject to revision by other executive bodies e.g. Genro, the Privy Council, the Lord Privy seal and the Army. The Diet was thus reduced to a simple advisory body as Ito himself held that "The use of the Diet is to enable the head of the State to perform his functions and to keep the will of the State in a well disciplined, strong, and wealthy cabinet on.....the duty of the Diet is to give advice and consent." The Diet was bicameral consisting of the House of Representatives and the House of Peers, the former being the Lower House with a usual life of four years. Both the Houses enjoyed equal status in law making, except that the Upper House was given lesser time to deliberate upon the annual budget. The Emergency Ordinances of the Throne rendered the Diet laws ineffective and though, the constitution declared that, "no ordinance will alter laws," The parliament found it hard to ignore and annul such ordinances for the fear of its forced dissolution or owing to the lack of definite majority or some other weakness on its part. The Imperial Diet had the financial power over the grants of the expenditures and the exacting of revenues. It could initiate a revenue bill. It exercised only supervisory power in dismissing the budget which it could only amend or reject, but could not increase.

The Privy Council.

Distinguished from the Privy Council of England, the Privy Council of Japan, created under the Constitution of 1889 was a body interposed between the cabinet and the Emperor's highest body of advisors." It was composed of 24 Councillors, one President and one vice President. The Cabinet ministers (twelve in number) were ex-officio members of the Privy Council, and other members were all nominated by the Emperor in consultation with the Prime Minister and these councillors appointed for life included among them the prominent industrial magnates, diplomats, generals, admirals and other men of distinction. This body which was composed of members appointed for life-time, tended to become bureaucratic, plutocratic, militarist and imperialist (since it included such elements) and thus became a threat to the liberal functioning of Parliamentary democracy.

Lord Privy Seal.

The Lord Privy Seal an organ of the Imperial House was always appointed from amongst the "Elder Statesman". His most important function was to advise the Emperor at the time of a new cabinet formation, but in practice the "Elder Statesman" advised the Emperor on the choice of the Prime Minister and his Cabinet.

The Supreme War Council.

The Constitution of 1889 was basically a militarist achievement and it contained elements more of military life than of Civil. Feudalism was abolished, military service was made universally compulsory and consequently a strong national army came into existence. To the cabinet also the ministers of the war and navy were not civilians as in the case in England, America and other democratic countries—but were the top ranking military and naval chieftains. Above this regular and constitutional system of Cabinet government, there existed an extra-constitutional body composed mainly of the field marshals and fleet admirals, and chiefs of the Army and navy staff, and other Emperor's designated generals and admirals.

This was known as the Supreme War Council. There naturally arose a dualism between the civilian and the militarist authorities and the militarist gained advantage of the Constitution's being silent on this point. This constant and internal dualism told adversely upon the administration of the country, particularly on matters of country's foreign relations. The Supreme War Council, though an extra constitutional body always gained the matters of military concern, and as Ogg and Zink put, "as to everything relating to armies, navies and military policy, the top military took its plan in the expanding extra-constitutional government."

Q. 2. Describe the main features of the new constitution of Japan of 1946.

Ans. The new document, prepared under the active participation of General Douglas Mac Arthur the Supreme Commander for the Allied Powers and the Chief of the United States forces in the Far East, bears on almost every page the clear evidence of its essential Western origin. Perhaps truly it is remarked "that the Constitution of 1946 is only a Japanese translation of a text prepared in English". The new Japanese Constitution, opening with a preamble, and containing in all 103 articles grouped in 11 Chapters, sets perhaps for the first time the people of Japan on a democratic pathway decorated with internationalist principles. The absolutist and the militarist spirit, adopted by the 1889 constitution under Prussian influence, has been substituted by the popular working of the Parliamentary Government designed on British and American lines.

The important features of the new constitution are the following :—

(1) Popular Sovereignty.

No one in 1889 constitution could trace a line of popular will being given a fair and independent share in the administration of the country, but now under the 1946 Constitution, the popular element is the life and breath of the whole document. In the very beginning it starts with a preamble which guarantees rights of the people and vests all sovereign authority in the hands of the people. The preamble states,

"We, the Japanese people acting through our duly elected representatives in the National Diet—do proclaim that sovereign power resides with the people..... Government is a sacred trust, the authority of which is derived from the people, and the benefits of which are enjoyed by the people. Thus it is clearly perceived that the present Constitution of Japan not only provides for people's rule but also sets up a definite machinery calculated to implement the principles of popular sovereignty. The Diet, with both houses, is popularly elected and declared to be "the highest organ of State Power"; the cabinet is expressly made responsible to the legislature, instead of being answerable to the Emperor. The procedure of amendment adopted in the 1946 Constitution is also fully democratic and any proposed constitutional change is first approved by two-thirds majority of both the houses and this is submitted to the electorate for final ratification by means of a referendum. The position of the emperor is left only to be too weak and formal—the Imperial throne being, as in England, a "convenient working hypothesis".

(2) The Bill of Rights.

The second point of reorientation is the inclusion of a Chapter of Bill of rights which provides guarantees, "eternal and inviolate," for the equal opportunity of education, work, "life, liberty and the permit of happiness". This feature was no doubt, also included in the old instrument of 1889, but it was too brief, incomplete and ineffective for being carried out into practice. Hence it always remained only a pious declaration, an empty ideal and an abstract theory.

(3) The impress of internationalism.

The third change is the provision regarding the International relations. The constitution proclaims in its preamble, "to occupy an honoured place in an international society striving for the preservation of peace....." The Japanese pledged themselves to a peaceful living based upon "the justice and faith of peace-loving people of the world." They outlawed war for ever" as a "sovereign right

of the nation and the threat or use of force as means of settling international disputes," and dissolved all the "land, sea, and air forces, as well as other war potentials". This was indeed a great deal of achievement for a country long addicted to military rule.

Q. 3. Describe the position, powers and functions of the Emperor under the new Constitution. Why does Monarchy still survive in Japan ?

Ans. The Emperor of Japan, who was before 1946 the "head of the Empire, combining in himself the rights of sovereignty", has now been relieved of his "sacred and inviolable" position. He is under the new instrument, recognized only as "symbol of the state and the people deriving his position from the will of the people with whom resides sovereign power." He is only the constitutional head and all his state-acts require the advice and the approval of the cabinet which is in fact the real chief executive. The Emperor is only a decorative functionary and enjoys almost the same status as the king of England does. In theory however, he retains the appointing authority and other state functions. With the advice of the Diet, he appoints the Prime-minister and the Chief Judge of the Supreme Court. With the advice of the cabinet, he can promulgate amendments of the constitution, laws, cabinet orders and treaties, convoke the Diet and dissolve the House of Representatives, attest the appointment and the dismissal of Ministers of State and other officials as stated by law; receive credentials from the Ministers and Ambassadors ; commute punishment, grant pardons, amnesty and can reprieve and award honours etc. The emperor has been deprived of his sovereign prerogatives and the exalted position which he enjoyed under 1889 Constitution." He is only a tool in the hands of the National Diet and his powers are mercilessly curtailed by an article which states that, "No property can be given to or received by the Imperial House, nor any gifts can be made therefrom, without the authorization of the Diet."

Why Emperorship is still retained ?

The Imperial throne still exists for the following reasons :—

- (1) Japanese are a people with adherence to old beliefs and practices. Hence, any new political regime could not be expected to function successfully without the position of the Emperor being retained.
- (2) An Emperor would, as in the case of England's king, be the best guarantee against any political outbreak.
- (3) The Emperorship might be made a centre for a constitution and liberal system of Government as is kingship in England.
- (4) The pledges contained in the Atlantic Charter and the Potsdam Declaration entitled the Japanese people to have an Emperor.
- (5) Hirohito, the present Emperor of Japan, was a man chiefly interested in Biology, and did not assume his own way in matter of State. He acted on Militarists advice. He publicly renounced all claims to divinity and mingled freely with the people.

Q. 4. Describe in brief the Governmental structure of Japan after the Constitution of 1946.

Ans. We can discuss the governmental structure as provided by the Constitution of 1946 under the following heads :—

The Cabinet.

All executive power is vested in the Cabinet. It is expressly made clear that the Cabinet is responsible to the Diet. The Prime Minister is first designated by a resolution of the Diet and then his formal appointment is made by the Emperor. The Prime Minister, then appoints all his ministers, mostly taken from the Diet. The

Cabinet resigns after the no-confidence motion is passed by the House of Representatives, unless the House is dissolved within ten days of passing such a resolution. The Prime Minister and his other ministers are all civilians, thus barring the entry of military men in the Cabinet.

The Cabinet is charged with "general administrative functions" and the execution of laws, conduct of foreign affairs, preparing the budget, and submitting it to the Diet, and others. The ordinary power is now carefully guarded by the Cabinet. The Diet can be convoked in special session by the Cabinet. All laws and orders need be signed by a minister of State and counter-signed by the Prime Minister.

The Diet.

The national Diet is the "highest organ of state power, and sole law-making organ". This is the centre of the new governmental set up and all legislative powers, previously diffused among Diet, Cabinet, Privy Council, and other such bodies now converge entirely to this "sole law making organ". All financial limitations have now been removed.

It consists of two houses—a house of Representatives and a House of Councillors (instead of the old House of Peers). The permanent character of the upper house is substituted by electing half of the members every three years. There is no electoral bar of "race, creed, sex, social status, family, origin, education property or income".

The House of Representatives enjoys a substantial primacy in making of law and the presenting of the budget over the upper House.

The Judiciary.

The Judiciary is also one of the striking feature of the new constitution of Japan. The Supreme Court is the highest judicial organ. The American model has been adopted and no extra-ordinary courts can be established.

The executive cannot exercise the final judicial power in any case. The judges are independent in the exercise of their functions. They can be impeached and can also be removed only when declared mentally or physically unfit. The Supreme Court is vested with the power to make rules of procedure for all tribunals. It can decide the Constitutionality of any law, order, regulation or official acts.

Q. 5. Describe the Composition, powers and functions of the two Houses of the Diet as provided in the constitution of Japan of 1946.

Under the Constitution of 1889 Japan adopted a bicameral system of Legislature constituting of two houses—a House of Representatives and a House of Peers. The former being the Lower House consisted of 466 members, approximately one member representing a population of 133,309. The usual life of the House was 4 years and every member received a salary of 3000 Yens per year, with the privilege of free-travel on government railway. The officials of the House were a speaker, a vice-speaker and a secretary, all elected and provided with free residence.

The Upper House is the House of Peers consisted of 400 members who were taken from (1) the adult male members of the Imperial family (2) Princes and Marquises over 30 years of age (3) Representatives of courts, viscounts and barons elected for a seven year term for learning (ii) representatives of the highest tax-payers (iii) representatives of the Imperial Academy. The legislature under the new Constitution of 1946 also composed of two houses with a slightly changed nomenclature, composition and functions. The two houses called the Houses of the Representative and the House of the Councillor (instead of peers) are elected bodies consisting each of 466 and 250 members respectively. The life of the lower house is 4 years while that of the Upper House is 6 years. (instead of being a permanent body) half members of which retire every three years. Each house elects its own President and other

officials and is free to regulate its own business and settle the dispute regarding one's eligibility to membership.

Powers and functions of the Diet.

Under the Ito Constitution of 1889, both houses of the Legislature enjoyed co-equal powers in matters of legislation except that the House of Peers was given lesser time to discuss and deliberate upon the annual budget. Theoretically, all laws excepting ordinances and Treaties were made with the consent of the Diet. Both the houses could vote upon the projects of law submitted to them by the Cabinet ministers and could also initiate a project of law. The amendment projects could only be initiated by the Throne and the Diet could only be consulted on this point. The power of ordinance vested with the throne was a heavy handicap to the free power of legislation by the Diet, and though the Constitution provided that "no ordinance will alter laws," the Emergency ordinance, however in practice rendered the Diet helpless to annul such ordinances. The main reason for this was the lack of majority, the fear of dissolution and other effective executive weapons.

The new constitution provides that ordinarily bills become law when passed by both the houses. If the House of the Councillors fails to pass a bill within sixty days of its receipt from the House of Representatives or in case of disagreement from the lower house the measure shall become law, "when passed a second time by the House of Representatives by a majority of two-thirds and more of the members present" Notwithstanding, the House of Representatives may call the meeting of a joint committee of both the Houses. The notable change from the previous to the present Constitution is that of a popular and free working of the Legislature. The executive cannot now too frequently and unfairly overpower the legislature and reduce it to a greater degree of impotence. Thus the 1946 sets a real pattern of Parliamentary democracy in Japan.

Financial powers of the Diet.

The Diet could not initiate the annual budget, its powers were limited to only supervisory function. The expenditure etc., were laid before it every year and it could only amend or reject it but could not increase. The Government, however, could not go beyond what was sanctioned by the Diet. The Constitution of 1889 already provided for such expenditure which the Diet could neither amend or reject without the concurrence of the executive. The revenues like the expenditure also require the consent of the Diet. The revenues were collected not by budget but by law. The revenues which were of the nature of compensation were not always consented by the Diet. With regard to the budget the Constitution of 1946 provides that, "Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of the Representative and when no agreement can be reached even through a joint Committee of both Houses, provided by law, or in the case of failure by the House of councillors to take final action within thirty days, the period of recess excluded after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet. "In case of ratification of treaties also this holds true. Then we find that in matters of finance the upper house is decidedly placed in a subordinate position to that of the House of Representatives.

Comparative Politics

COMPARATIVE POLITICS

Q. 1. Compare and contrast the position, powers and functions of the English Prime Minister with those of the American President.

Ans. A comparison of the position, powers and functions of English Prime Minister and the American President may be made under the following heads :—

In their selection and responsibility :

In the modern world the two most powerful functionaries of Government are the Prime Minister of England and the President of U. S. A. England enjoys the cabinet or the Parliamentary form of Government, the two essential features of which are the responsibility of the executive to the legislature and an intimate connection between the two organs. The English Prime Minister is the indirect choice of the people. The electorate puts him in office by voting for the party led by him. The President of U. S. A. is directly elected by the people. Thus the President of U. S. A. attracts greater attention. He is not responsible to the Congress and cannot be dismissed by it. He can be impeached by the House of Representatives for treason and other such crimes. The trial is held by the Senate where two third majority is required for conviction. Though the British Prime Minister cannot be impeached, he is accountable to the House of Commons. In practice however the cabinet controls the House. Nevertheless the Prime Minister is deep dipped in responsibility, while the American President is irresponsible.

In their powers and functions :

(a) *Legislative powers :*

In the legislative domain the powers and responsibility of the British Prime Minister are far greater than those of the American President. He is the leader of the national executive. Together with his colleagues, he moulds, guides and shapes the legislative policies and activities of the state in a measure beyond the imagination of the American President. Though in theory the British Parliament legislates, the entire initiative and responsibility rests with the Prime Minister and his cabinet. The British public would blame him primarily for bad and defective legislation. The President of U. S. A. has no such legislative power. He is not a part of the legislature. He cannot initiate and pilot any legislative measure upon which he has set his heart, except when his party happens to have majority in the House. He can only recommend measures for the consideration of the Congress which it may or may not pass. The American public cannot lay the responsibility for bad legislative measure on their President. But when the President's party commands a majority in the House of Representatives, his veto power becomes the vehicle of his legislative leadership.

(b) *Financial Powers.* In the field of finance the American President may seem to have greater powers in so far as he prepares the budget and submits it to the House. In England the Chancellor of the Exchequer prepares the Budget. But he also cannot dare to flout the wishes of the Prime Minister of England. The American President is at the mercy of the House of Representatives which may change the budget beyond recognition. This is not possible in England where the Prime Minister with his cabinet almost always has his way.

(c) *Executive Powers.* In administration theoretically the American President has the largest responsibilities and greatest powers. "He is," writes Ogg, "the foremost ruler of the world." He is the Chief Magistrate in the federation and the commander in chief of Army and Navy. He receives ambassadors and appoints foreign embassies, Public Ministers, Council and the Judges of the Supreme Court. He takes care to see that the laws of the state are

faithfully executed. He is in charge of the foreign affairs of the country. He has to consult the Senate in matters relating to Federal appointments. Here again the American President almost always carries his wishes due to *Senatorial Courtesy*. The facts that the maintenance of law and order in various states is left to State Governments themselves as well as the geographical isolation of the country together with the Senate's powers to rectify the appointments and the treaties made by the President greatly reduce the importance of his powers in domestic as well as in foreign affairs. In the times of war, however, the President becomes the virtual dictator of the nation. He is constitutionally empowered to do everything for overcoming the National crisis. In peace times, however, his powers and responsibility are not greater than those of the British Prime Minister who though technically the first among his equals is in practice endowed with such a plenitude of powers as no other constitutional ruler in the world possesses, so long as his party commands a majority in the House of Commons, he can do what the American President can never do. "He can give a pledge", writes Ramsay Muir, "before hand that such a treaty will be signed and rectified, that such and such a law shall be passed or that such and such moneys shall be voted by parliament."

Q. 2. Compare the position and functions of the Speaker of the House of Commons in England with those of the Speaker of the House of Representatives in U. S. A. and the President of the Chamber of Deputies in France. (Agra Uni. 1942, 1946, 1951)

Ans. The Speaker is the most conspicuous figure in the House of Commons. Despite his title, he never speaks in debates nor does he say more than a minimum in any other connection. His position is as old as the British House of Commons. He was called the Speaker not because he delivered speeches in the House of Commons but because he was the spokesman of the House in its dealings with the crown. Originally the Speaker's chief function was to take petitions and resolutions from the

House and lay them before the king in Parliament for it will be recalled that in the early days the House of Commons was a petitioning rather than a legislative body. The House requested the king to make laws and the king made them if he liked. The House prayed to the King to redress the grievances and the king complied at his own discretion. The Speaker was merely the bearer of these numerous and sometimes unwelcome requests.

But today the Speaker is the President of the House of Commons. The speaker is in theory elected by the House itself. Although the choice of a Speaker must be approved by the king, his approval is never refused as the selection is really made by the Prime Minister before the House acts at all. In other words the Prime Minister selects the Speaker after consultation with the members of his cabinet and after assuring that the choice is generally acceptable to the House. In theory, however, the nomination is made and seconded by two private members. "In order to perpetuate the fiction," as Munro says, "that the choice is that of the whole House and not of the minister's." The motion to elect is not put to vote for there is usually only one candidate. The Speaker who has served in the preceding Parliament is by custom always re-elected even though the ministry has changed.

The Speaker from the moment he takes the chair, ceases to be a party man. He remains no longer a liberal, a conservative or a labourite. He attends no party gatherings and is not consulted on any matter of party policy. He must be neutral in politics.

No wonder the Speakership in England is regarded as a prize, an office not only of great honour but also of long tenure. The Speaker is paid a liberal salary of £5000 a year. A wing of the Palace of Westminster is assigned to him. He gets both a pension and a peerage when he retires. He is a no party man and so he is every party man. He receives universal honour and his position is 7th in the realm.

The Speaker has to discharge important functions. He guides and controls the deliberations of the House, decides points of order and announces the result of voting. Even when called upon to cast his casting vote in the case of a tie, the English Speaker does not act according to his personal opinion. He breaks a tie by voting in obedience to certain well established conventions. If for example his negative vote would determine the defeat of a measure while his affirmative vote would prolong its consideration, the English Speaker always votes 'Aye'. If a tie comes on a proposal to adjourn the debate he always votes 'No'. If he is in doubt as to how he should vote or as to the proper ruling on any question of order or privilege, he inquires from the clerk of the house and does accordingly. His rulings on points of order are final. The Speaker may give any ruling. The House cannot override it. He has the right to suspend any member from the House, if he finds him behaving in a disorderly manner. He can adjourn the House in case of a serious disorder. The Speaker does not allow questions to be asked where the central departments are not responsible to the Parliament. According to the standing order of 1919 he can pick out for discussion those particular amendments which he thinks most appropriate. The Speaker is to prevent the direct criticism of the king in Parliament. By the Parliament Act of 1911, he has been made the sole authority to see whether a particular measure is or is not a money bill.

The Speaker of the American House of Representatives is a living contrast of the English Speaker. He is elected on party lines. Unlike the British practice, the Speakership is keenly contested here. The American Speaker does not leave his party loyalty but continues to be a party man and offers advice to his party group when necessary. He sometimes becomes a more aggressive partisan than before being elected a Speaker. He uses his office to the advantage of his party. The consequence is that at the next election he cannot be re-elected unopposed like the British Speaker. He had one great power which the Speaker of the House of

Commons never possessed : He used to appoint various standing committees of the House of Representatives and nominate their Chairmen. But this power has been taken away from him now. Unlike the British Speaker, he is no judge to decide whether or not a certain bill is a money bill. Yet he has great influence in the House. He is the recognised leader of the majority party and as such exercises enormous powers in shaping the course of legislation in which the British Speaker has very little hand. His duties of presiding over the deliberation of the House, maintaining order, interpreting rules, deciding points of order and recognising the person who wishes to address the House are similar to those of the Speaker of the House of Commons.

The President of the French Chamber of deputies resembles more the American Speaker than the Speaker of the House of Commons in England. He also remains a party man, though now a tendency is hardening on British lines. He favours his party with due regard to fair play and justice. He can hold office as a minister-a-thing, unthinkable in England. He is consulted by the President of French Republic at the time of the selection of Prime Minister, a practice the like of which does not exist in Britain and cannot exist in America. He is known to have reprimanded the Deputies in a much sharper language than is used in England or America. The function of the President in interpreting the rules of procedure and conducting the business of the House are regulated partly by law and partly by the rules of chamber as is the case in England. In recent years it has become unusual for him to leave his seat and take part in debate but he is not prohibited to do so. He is thus a very powerful figure in politics of the country and has sometimes been called to form a ministry as a Prime Minister. Unlike the British practice, he is one of the outstanding leaders of the country. Many notable French Statesmen have served in this office. The Speakership of the French House of Deputies has often proved a stepping stone to Presidentship of the Republic.

Q. 3. Compare and contrast the Swiss Federal Council to the British Cabinet in point of Composition, powers and functions and relation to the legislature.

(Agra 1945)

Ans. The Cabinet in England is the threefold hinge that connects together for action the king, the Lords and the Commons. It is the most curious formation in political world of modern times. It lives and acts simply by understanding. The Cabinet is the real as distinguished from the nominal executive in England. It has been defined as a body of royal advisers chosen by the Prime Minister in the name of the Crown with the tacit approval of the House of Commons. It is the steering wheel of the ship of the State. Swiss Executive is also important due to its unique nature. "The Federal Council", says Bryce "is one of the institutions of Switzerland that best deserves study. The Swiss Federal Council in part resembles and in part differs from the British Cabinet in points of composition, function and relations with the legislature.

In Composition.

The Swiss Council resembles the British Cabinet in so far as its members are heads of the administrative department and are the members of the legislature chosen as its Committee to act on its behalf, but differs from it in size, in methods of election and in unanimity of opinion. It consists of only 7 members whereas the British Cabinet is a much larger body—some times containing as many as 20 members. The members of the Swiss Cabinet are elected by the legislature not appointed by an outside authority as the cabinet ministers are by the crown on the recommendation of the Prime Minister. The former need not belong to the majority party as the British Cabinet must be. In other words the members of the Swiss Council need not hold common opinion as the British Cabinet Ministers do. They are like the British Cabinet Ministers not committed to any political programme. Swiss Ministers can express their conflicting views. This is not allowed in the British Cabinet system. Another very

fundamental difference between the two is that the former is a plural and the latter is a single executive. There is no one in the Swiss Council who exercises the dominating influence over the other members as the Prime Minister does in the British Cabinet. The Chairman of the Swiss Executive has no more importance than other members who are his equals and in no sense subordinate to him. But the British Prime Minister is the head of the Executive.

In powers and functions.

The functions of the cabinet in England are briefly put in the report of the machinery of the Government Committee (1918) as follows :—

- (a) The final determination of the policy to be submitted to Parliament.
- (b) The Supreme control of the National Executive in accordance with the policy prescribed by the Parliament.
- (c) And the continuous coordination and delimitation of the authorities of the several departments of the State.

The first involves the preparation and approval of legislative programme for each session of the parliament. Government measures are introduced, explained and defended before the parliament by the Cabinet. This supplies an effective leadership to Parliament in legislation. It also approves of the King's speech, determines its attitude introduced by the private members of the Parliament and discusses the Annual Budget.

The second involves the determination of how the Executive authority vested in the crown in respect of foreign affairs, defence etc shall be exercised.

The third involves a general control and the coordination of the work of several departments of the Government.

The functions of the Swiss Federal Council are very much similar to those of British Cabinet. It is the

Supreme executive authority of the State. It conducts foreign relations, looks after the administration of various departments of the Government, supervises the execution of laws and prepares the annual budget. Thus the functions of the two do not differ in kind but in degree only. The Council is not so omnipotent as the Cabinet. It cannot enforce its will upon the legislature as British Cabinet does. It does not control the legislature but it is controlled by it because the Swiss Executive has no power to dissolve the popular House.

In their relation to legislature.

In point of relation to the legislature also the Swiss Council in part resembles and in part differs from the British Cabinet. Its members have their seats in the legislature; they make motions, they are heard and can be interpellated with regard to their official deeds and policies like cabinet ministers in England. The Council formulates and prepares draft of important legislative measures including the budget and submits them to the House and advocates their enactment into law as does the British Cabinet. But its role as leader and guide of the Federal legislature is not so important as that of the British Cabinet. It cannot rule the popular House as the Cabinet rules in England. This is so mainly because:—

- (a) The Swiss Council cannot dissolve the legislature as the Cabinet can in England.
- (b) In Switzerland unlike England there is no rigorous party politics, party discipline and party organization. The Swiss Councillors may not belong to one majority party and may speak without caring for party colours.

Another important difference between the two is that in case of difference with Federal Legislature the Council does not resign. It pockets its pride and submits to the will of the legislature. In England the British Cabinet is bound to resign on an adverse vote of the House of Commons. Thus the theory of responsibility to the legislature in the

two countries is differently understood. The Swiss see no reason why ministers whose general work is satisfactory should be turned out of office because they and the chamber are of different opinion on some single issue. They believe as Bryce puts it "Why lose your best servant because he does not agree with you on matters outside the scope of his work; as well change your physician because you differ from him in religion." Thus the permanency of the Swiss Executive distinguishes it from the British Cabinet.

Q. 4. Enumerate the basic similarities and differences between the Swiss, British and American Executive Systems.

Ans. Swiss Executive is similar to the British executive and differs from the American executive in so far as :—

1. The federal council is in a sense a committee of the legislature chosen by it to exercise the executive functions.

2. Each member is the head of an administrative department.

3. The members may occupy seats in both chambers of the legislature and may make motions heard but cannot vote.

4. The members may be interpellated regarding their official deeds and policies.

5. Members are largely subject to the control by the legislature.

6. The Federal Council formulates and prepares the drafts of all important legislative measures including the Budget, introduces them into legislature and advocates their enactments into laws.

Swiss Executive differs from the British type and resembles the American in so far as :—

1. That the members do not possess the powers which ministers in most parliamentary states have, namely the power to dissolve the legislature or one chamber of it and appeal to the electorate when they believe that they rather than the legislature represent the nations will.

2. And above all that the members of the executive are not responsible to the legislature in the sense that they are bound to resign when they lose its confidence or when the measure and policies which they advocate are altered or rejected. Instead the Executive is fixed for a term of four years. Here it resembles the American type in fixity of tenure though differing from it fundamentally in so far as it is still responsible to the legislature.

Swiss Executive differs from both the cabinet as well as the Presidential executive of U. S. A. in so far as :—

1. It is plural executive.

2. It does not necessarily represent the majority of any political party or a block of political parties in either chamber. Consequently it is not necessarily a body which has unanimity of opinion. Politically speaking the members of the Council are not committed at the time of their election to any political programme.

3. Though the members of the Executive Committee stand as one body, they are allowed to express their divergent and conflicting view points and advocate them, caring almost nothing for party colours.

Q. 5. "The referendum has been described as essential to complete democracy". What are its principal advantages and disadvantages and what differences are there in the working of direct democracy in Switzerland and U. S. A. (Agra 1942).

Ans. The referendum is a device whereby any law which had been enacted by the legislature may be withheld from being put into force until it has been submitted to the people and has been accepted by them at polls. Its

intent is to provide a popular veto upon something which the legislature want but which the people do not want. Thus referendum consists of the submission to people for approval or rejection of a law passed by the legislature.

Kinds.

The referendum is of two kinds,—compulsory and optional. It is compulsory when every law passed by the legislature must be submitted for the vote of the people. It is optional when a bill passed by the legislature need be referred to the people only on demand by a prescribed number of people.

Merits.

Strictly from the point of view of democratic theory referendum has some definite merits. It embodies the principle of popular sovereignty more than what the representative bodies do and therefore when a law has received the approval of the people it is likely to command a more willing obedience from the people than when it has only received the approval of the legislature.

Consequently the referendum minimises the danger of rebellion.

The referendum also ensures that the laws opposed to the popular will shall not be passed. Indeed the demand for this right accrued from the fact that the legislatures usually fail more or less to translate the people's wishes into laws. The referendum is particularly useful as a check on legislative bodies, whereas in Switzerland the executive has no veto upon the bills passed by the legislature.

Referendum is also of high value as a means of political education. Under the system of referendum there is the maximum opportunity to hear and decide on the basis of day to day needs and aspirations of the nation. Referendum thus keeps the people alive even after the storm of election is over.

Referendum thus has become an important *Sin-gua-non* of democracy for it is the surest method of discovering the wishes of the people "an excellent barometer of Political atmosphere". (Banjour). It compels the legislature to agree with the aspirations of the people. It puts an end to acute conflicts between people and Government and provides one of the safest barriers there can be against revolutionary agitation.

Referendum in a word stimulates patriotism, inspires a sense of responsibility in the citizens affords an excellent arena for political education, brings the governing classes in close contact with the masses and above all inculcates in the people that they are really sovereign—their voice is the voice of God in administration.

Demerits.

A study of the working of referendum in some States has shown some defects in the working of referendum. Broadly speaking the following two reflections emerge under this head :—

1. The theoretical advantages referred to above have not been realized in all the states at any rate to the same extent.

2. Direct legislation by the approval of the people has certain positive limitations which considerably lessens its value as governmental institution.

Regarding the first it is sufficient to say that while the Swiss are well qualified by intelligence and knowledge of their public affairs and their conservative nature they profit by referendum. But it is more difficult to speak in the same terms of other states. It has done little and perhaps positive harm in America. The proportion of the people who vote at referendum is less than the proportion which votes at ordinary election. Further where referendum is optional it is seldom used. These facts suggest the thought that people are more willing to choose between themselves than between the laws. At

any rate the educative value of referendum has not been as great as it was expected.

The referendum has some positive limitations, which are discussed below :—

1. Referendum tends to weaken, if not to paralyse, the sense of responsibility under which the legislatures work for the feeling develops that the ultimate responsibility for any given measure rests upon the voters and not upon the legislature. Thus referendum is also likely to deteriorate the quality of the members of the legislature. It is possible that the fear of the popular vote may tend to make some legislature timid rather than reckless. And timidity, it may be argued, is suicidal to the progressive interests of the country.

2. Experience shows that, the proportion, as already stated, of the voters, who take part in referendum, is very small. Thus the decision arrived at is of a minority under the system of referendum. This is anti-democratic. The argument that since it is open to all to vote, failure to do so must be taken as approval, ignores the lazy psychology of the people. If to cure this defect voting is made compulsory, it is found that in sheer disgust people drop blank papers in the ballot box.

3. The number of specific questions capable of decision by mass voting is very small. People in general are strangers in the art of Government. "The busy and ignorant voter" writes Laski "hardly seems the person qualified or likely to make, "correct decisions about Governmental policies". Indeed the referendum is an appeal from responsibility to irresponsibility, from experts to laymen, from knowledge to ignorance.

4. Referendum also causes delay and complicates the process of legislation. The voters are ill fitted by their education and their selfish instincts to pronounce speedily impartial and sound judgment on complex issues of legislation. It was in this spirit, that Finer opined, that a country would be better off if the voters learn to choose

some one whom on the grounds of honesty and capacity and consonance with their general point of view and interest they can trust.

Differences in the working of Direct democracy in Switzerland and America.

Besides Switzerland, certain States of American Union also enjoy direct democracy. It is worth while to compare the working of direct democracy in Switzerland and America for a better evaluation of the democratic institutions of Switzerland. One notices the following differences between the two :—

(a) In Switzerland the adoption of referendum and the initiative was inspired more by considerations of democratic theory than with any discontent with the working of representative legislatures. In the American States, on the contrary, the introduction of these devices was due to the keen sense of dissatisfaction which the citizens felt with the conduct of representative bodies. Legislative abuses had become glaring and wide spread in the American institutions. Consequently there was a strong popular desire to rectify them. The result was the adoption of these devices.

This difference of motives has been responsible for certain differences in their working. The Swiss people make a more frequent use of the referendum than of the initiative because they wish more to approve than to check and direct their law-makers. The citizens of American States make greater use of their right to initiate for they want to direct their legislators.

In America these rights are much abused. Agents of political associations go round collecting and even purchasing signatures to the proposals which they want to initiate. In some cases signatures are even forged. Such evils are not found in Switzerland.

Lastly, the practice to recall representatives and elected officials prevails in the American States and not in Switzerland.

Q 6. Describe the methods of amending the constitution of Switzerland, U S A. and France and add brief comparative reflections.

(Agra Un. 1941, 1949).

Ans The amending process in Switzerland.

The constitution of Switzerland is federal in character. It is a federation of 19 cantons each having the right to send 2 members to the Council of States and six half cantons sending one member each to that body. Due to this Federal character, the constitution has to be rigid in character. It cannot be amended through the ordinary process of law making. A special procedure has been provided for amending the constitution, which can be analysed under the following heads.

(a) *Initiation of a complete revision.* The constitution provides for its complete or partial amendment at any time. Article 130 of the constitution lays down that when either division of the Federal Assembly passes a resolution for the total revision of the constitution and the other division does not agree or when 50,000 Swiss Voters demand a total revision, the question whether the constitution ought to be revised or not is in either case submitted to the people who would vote 'yes' or 'no'. In either case if the majority of the Swiss citizens who vote pronounce their judgment in the affirmative there shall be a new election of both chambers for the purpose of under-taking the revision. If both the Houses of the legislature agree on the issue of total revision, the question of revision is not to be referred to the people.

(b) *Initiation of partial revision.* A partial revision may take place in one of the following two ways (a) when 50,000 Swiss Voters initiate a measure for partial revision either by a simple desire or by presenting a complete draft of the amendment. But in the former case the Federal council proceeds to draft the amendment after the Federal Assembly approved of the demand for revision among the general lines. And in case the Assembly disapproves the question whether there must be a partial revision of the constitution

is referred to the people. When the demand is presented in the form of a bill complete in all details, the Federal Legislature must submit it for the approval of the people and the cantons. If the federal assembly does not approve of it, it may frame a bill of its own or recommend to the people the rejection of the bill proposed and submit to them its own bill or proposal for rejection at the same time as the bill presented by the popular initiation.

(2) An amendment may also be proposed by either or both branches of the Federal legislature. In the way prescribed for passing Federal laws i. e. acting separately. Thus both the people and the legislature have the right to propose an amendment.

(c) *Obligatory referendum.* In either of the above cases the amendment is referred to the people. It is considered to have been passed only when it has been voted for by the majority of the people in majority of cantons. In determining the majority, the vote in a full canton is counted as one and of a half canton as half and also by the majority of the people voting in all cantons.

The amending process in U.S.A.

In U.S.A. Constitution there is no separate provision for a complete or partial revision of the constitution as it is in Switzerland. In U.S.A. the amendment to the constitution can be proposed in the following two ways :—

1. The Congress itself may propose an amendment, each of the two branches proposing it separately by two-thirds of majority.

2. Legislatures of $\frac{2}{3}$ of the States may apply to the Congress and the latter may call a convention of the State for that purpose.

But by whatever method an amendment has been proposed it will become valid only when it has been ratified by the legislatures of the $\frac{3}{4}$ of the states or by a convention called for the purpose in $\frac{3}{4}$ of the states.

The amending process in France.

The French constitution is much easier to amend. The proposal for amending the constitution must first be voted by the two Houses each sitting separately and agreeing by an absolute majority of votes. Negotiations between the political leaders of both Houses settle the form and scope of the amendment. After the two Houses have separately agreed they sit together in a joint session and pass the amendment by an absolute majority of votes, but no amendment can be introduced to change the republican form of Government.

Critical comparative reflections.

From the aforesaid analysis of the amendment system in three countries the following comparative reflections emerge :—

1. Firstly, if the French system of amendment is the easiest, the American system of amendment is the most difficult and the slowest of them all. This is proved by the fact that during more than 150 years that have passed since the adoption of the constitution only 22 amendments have become law while 29 amendments were carried on in Switzerland upto 1921 in 47 years. The Swiss system of amendment is moderately speaking the best—a half way house arrangement between extreme rigidity of America and flexible rigidity of France.

2. The Swiss System of amendment is most democratic. Neither in America nor in France people have been given any initiative either in the moving of the amendment or in the approval of the amendment. These so make the Swiss system of amendment the best and the most preferable.

Q. 7. It is stated that the Senate of Canada is the weakest and that of U. S. A. the strongest of the existing second Chambers. Do you agree with this view? If so, why?

Ans. The Canadian Senate in spite of its equal powers with the House of Commons does not take any part in legislations. It is a sleeping beauty and is not an effective brake to the hasty and ill-considered legislation of the House of Commons. It is merely a recording body and hardly disagrees with the Lower House or opposes any governmental bill. Sir George F. Foster summed up the position of the Senate when, in the course of a debate, he remarked. "Who on the street asks to know what is the opinion of the Senate upon this or upon that question? Who in the Press really takes any trouble to know whether the Senate has any ideas, and, if so, what they are upon any branch of legislative concern, or upon conditions which require the best and most united work of all in order to arrive at a successful conclusion."

The contrast.

On the other hand the Senate in the United States of America is admittedly the most powerful and its membership is most coveted. "The Senate of U. S. A. designed to be a check upon the House of Representatives has entirely left the constitutional rails and has ploughed its own way into a distinct primacy in the Congressional system, while the House of Representatives has declined into a state of garrulous and gesticulating debility."

The 'whys' of Contrast.

The reasons for this sharp contrast between the Upper Chambers in Canada and U. S. A. are not far to seek. (a) In Canada there is a Parliamentary form of Government; whereas in the U. S. A. it is the Presidential or the non-Parliamentary Government. In a Parliamentary Government, the Upper Chamber is naturally intended to be a weak House since it is not a representative House. It is required to be only a revisory Chamber. (b) Moreover, the intention of the fathers of the Canadian Constitution was that the Senate should be a replica of the House of Lords in England and it implied a House with weak position and inferior powers. But the Canadian

Senate could not keep pace even with the House of Lords. For example, in England a minister, except the Prime Minister, may belong to either of the Chambers. But in Canada, by virtue of a convention, the Cabinet members do not represent both the Chambers. The Government is represented there by a leader whose business is to see that the Government measures are duly passed in the House. In the absence of a minister the House neither carries initiative nor impetus. There is no spokesman of the Government from whom necessary information can be had nor is there any one who can make authoritative pronouncements on behalf of the Government. All this means a virtual impotence of the House. (c) In the United States of America, on the other hand, there is a Presidential Government wherein the executive is entirely divorced from the legislature and the theory of the Separation of Powers is at work. Naturally, there does not arise any necessity of subordination of the Senate. The authors of the American Constitution also desired to check the powers of the President by giving specific executive and legislative powers to the Senate. To check the hasty and ill-considered legislation of the House of Representatives it was also given co-equal powers both with respect to legislation and finance, except that the Money Bills must originate in the House of Representatives. The Canadian Constitution also does not lay down any limitation on the powers of the Senate excepting one, i. e. Money Bills must originate in the House of Commons. Here it agrees with the Senate of the U. S. A. But as already pointed out in a Cabinet Government these powers are only theoretical and not real. The Senate has in practice abdicated from all its powers whether legislative or financial. It has fallen in line with the House of Lords, because it represents no one and the responsibility of the Cabinet to the Lower House implies that the Upper House must ditto the decisions of the Lower House. The Senate in Canada hardly disagrees with the House of Commons or dare oppose any Government bill. Its position is rather worse than the House of Lords.

In their powers.

Both in the United States of America and France the Senates possess real and effective legislative and financial powers. The American Senate is a serious and potential check on the House and many a time it has so amended the money bills that this power to amend it is converted into a power to originate. Whenever there is a disagreement between the Senate and the House, the matter is referred to a joint committee consisting of both the Houses and in that case the Senate usually carries the palm. There is no provision in Canada for solving the deadlock. As a matter of fact deadlocks are very rare. In case there is one, the Senate must succumb to the wishes of the House of Commons.

But there are two distinct powers which neither the Canadian nor the House of Lords enjoy. The Constitution of America has conferred upon the Senate the powers of (i) appointments and (ii) Treaty Making. All the appointments made by the President must have the consent of the Senate. Similarly, all the Treaties concluded by the President must be ratified by two-thirds majority of the Senate. The Senate has always exercised a very powerful and sometimes deciding influence in Foreign Affairs and shaping of the Foreign policy of the United States. The convention of "Senatorial courtesy" has further added to the influence and prestige of the Senators.

Senates as revisory chambers.

The real purpose of the Second Chamber is that it should be a revisory Chamber. There should be a dispassionate discussion, so that the defects left in the Lower House where the bills are rushed through, because of lack of time, be removed. Moreover, the composition of the House being comparatively small there are better facilities for considered and detailed discussion. Both the Senates in the United States and Canada consist of 96 members and fulfil the above conditions. But the Senators in Canada pay scant attention to the work of the

House. Sometimes the Senate may take hardly five minutes to pass a bill, or the debate may take an hour. Senators in America have fully justified their position. They are seasoned veterans and full dressed debates coupled with their mature experience are the usual feature of the House.

In their composition.

But the main weakness of the Canadian Senate lies in its composition. In the United States and France the Senators are the choice of the people who are elected for a period of 6 and 9 years, respectively. In Canada on the other hand the Senators are nominated for life by the Governor-General. They, therefore, represent no one. The method of nomination has its own defects. The determining factor of such appointments is the service to the party. It is accordingly, a House with vested interests. Since the Senators are not elected they cannot enjoy the powers and strength that go to the elected representatives of the people. Both the American and French Senators are the choice of the people, naturally they carry more influence, prestige and power. They are the best fitted only to voice the feelings of those whom they represent.

In the composition of the Canadian Senate the Constitution seeks to reconcile two incompatible ideas, nomination and representation of the Provinces. This has made it unsuitable for both the purposes. The American Senate is the guardian of the interests of the federated units and every State, big or small, is equally represented therein. This federal idea of equality of representation is not followed in Canada. Grouping of the Provinces into four regions so as to give to each region an equal representation is artificial and devoid of reason and commonsense. For, the regional nominations are always made on party lines rather than to secure local interests. Party allegiance cuts across Provincial boundaries. Sir J. A. Marriot sums up his estimate of the Canadian Senate in the following words :—

"It will be observed that the Canadian Senate attempts to combine several principles which if not absolutely contradictory, are clearly distinct. Consequently it has never passed either the glamour of an aristocratic and hereditary Chamber, or the strength of an elected assembly, or the utility of a Senate representing the Federal as opposed to the national ideas. Devised with the notion of giving some sort of representation to provincial interests, it has, from the first, been manipulated by party-leaders to subserve the interests of the central executive."

Q. 8. Compare the British House of Lords with the French Council of Republic, the Upper House of U. S. A. and that of Switzerland in point of composition, powers and functions. (*Agra 1940, 1941, 1943, 1945, 1949*).

In composition

Ans. At present the House of Lords contains about 740 members of whom more than 600 are peers of Great Britain while 16 are peers of Scotland and 28 are representative peers of Ireland. But the House is not composed of hereditary peers alone. Its membership includes, in addition, 26 Lord Spiritual. When a Bishop retires from his office, he loses his right to seat in the House. It has also been provided that 6 Lords of Appeal shall be appointed peers for life and have seats in the House of Lords. These are chosen from amongst the distinguished jurists of the British Empire. Unlike other members of the House of Lords, they are paid an annual salary.

While to-day the French Council of Republic (formerly the Senate) is composed of 315 elective members as compared with 314 in the old Senate. The Senators who serve for 9 years are chosen to represent the 89 departments of France, the 3 departments of Algeria and the various French Colonies. Each department has from one to five Senators; the colonies have 4 Senators among them. One-third of the Senators retire triennially. The selection is made by an electoral College which is

convoked every three years in each department. These are made up of four elements, (a) the members of the National Assembly (Formerly Chamber of Deputies) who represent the department, (b) the members of the various *arrondissement* Councils within the department, (c) the member of the General Council of the department and (d) delegates chosen by the Municipal Councils of all the Communes within the department. There are about 36000 Communes in France. Their delegates far outnumber all the other members of the electoral College and can usually Control the election of Senators. Hence the Senate is often called 'the Great Commune Council'.

The Senate of U. S. A. consists of 96 Senators. These are elected by voters to serve for six years. Each state is represented by two Senators. One-third of the Senators are elected every two years; in order that each session of the Congress may have in it men experienced in public affairs. A Senator must be at least of 30 years of age.

In Switzerland, however the Council of State is composed of 44 members, 2 from each full Canton and one from each half Canton. The method of choice and the term of office of the members are decided by the Cantons. As a matter of fact in all but four Cantons the members are elected by the people in the exceptional four Cantons they are elected by the Cantonal legislatures. Their term of office are four years in 14 Cantons, three in eight and one in three.

In Power and Functions.

(a) Legislative.

The powers of the House of Lords upto 1911 were theoretically co-equal with those of the commons. But the Parliament Act of 1911 has restricted the power of the House in several important particulars. The power of this House over Money Bill has been virtually abolished by this Act. If the Lords withhold their assent from a money bill for more than one month after it has been passed by the House of the Commons, the bill may become

an act on the royal assent being signified without the consent of the Lords. If the bill other than money bill is passed by the Commons in three successive sessions, whether of the same parliament or not, and is rejected by the Lords, it may on a third rejection by them be presented for the Kings assent and on receiving that assent will become a law, notwithstanding the fact that the House of Lords has not consented to it provided two years have elapsed between the second reading of the bill in the 1st of those sessions and the date on which it passes the Commons for the third time.

While on the other hand the legislative powers of the Senate of France are equal to those of the Chambers of Deputies except as regards the Financial bill which usually originate in the lower chamber, though there is no definite law about it. The Chamber of Deputies, like the House of Commons, has no power to compel the senate to discuss a bill. If the Senate does not like a particular bill, it will simply bury the bill in silence. It has very often sent the bills, passed by the Lower House, into no mans land of a commission, "whence the only dispatch concerning them is missing." Money bills however must originate in the Chamber of Deputies, but the Senate can amend them by way of rejecting or reducing terms of taxation or appropriation but it cannot increase them. In cases of conflict, a conference between two commissions one appointed by each House debates together the points at issue between the two Houses but they vote separately. In case this method fails, nothing further can be done. Under the fourth Republic, however, the French upper chamber, as shown elsewhere, is "a pale shadow of its former self."

The Senate of U. S. A. as a legislative chamber, has the same powers as the House of representatives. Every bill must pass both the Houses. Even when the President vetoes it, Senate's assent to the bill with two third of its majority is essential, for its becoming a law. Revenue bill originates in the lower House. But the Senate can insert wholly new proposals of its own and strike out

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everything except the enacting clause. Thus as Bryce points out, "Even in finance the Senate has established itself as at least equally powerful with the House, although this does not seem to have been contemplated in the Constitution."

In Switzerland the two chambers have absolutely equal powers. No measure can be enacted which has not been approved by both. This is a unique feature. Authorities however tell us that in practice, the Council of States has become definitely inferior in importance. The Swiss Constitution makes no provision for settling disputes between the two Houses; and in fact disputes have been rare. When however such a friction occurs it is set at rest by popular referendum.

(3) Administrative.

The Senate of U.S.A. is the most powerful upper chamber in the Executive field.

The Swiss constitution states explicitly that subject to the right reserved to the people and the Cantons, its consent is necessary for treaties with foreign States, for the declaration of war and the Conclusion of Peace. The enactment of the annual budget, the approval of the State accounts and decrees authorising loans are included among its powers. It is vested with a general supervision of Federal administration. It elects the Federal Council, the Federal Tribunal the Chancellor and the C-in-C of the Federal army. In respect of other offices also, the Legislature may be vested by Federal Legislation with the rights of election or confirmation. All this is done by the Council of States sitting jointly with the National Council i. e. in session of the Federal Assembly.

In the judicial sphere.

In the judicial fields the House of Lords has three special powers which it does not share with the House of Commons. It is a court for the trial of its own members. It is the body which hears and determines impeachments brought by the House of Commons. In contrast to this Senate of France had special prerogative of serving as a high court of justice for the trial of the President of Republic, or the ministers or take cognizance of assaults on the security of the State. According to the Constitution the President may be impeached for high treason only, but a member of the ministry may be bailed before the Senate for any offence committed in the exercise of his official functions. For assaults on the security of the State the Senate may try any person, whether he be a public official or not. The constitution of the 4th Republic has deprived the Senate of this judicial privilege. The Senate of U.S.A. is only a high Court for trial of cases of impeachment. The Swiss Council of State is empowered with a general supervision of the Federal Court. It decides conflicts of jurisdiction between the Federal authorities. But these powers it shares with the lower House. Thus

judicially the House of Lords of England is the most supreme working organ.

Q. 9. Compare the composition and functions of the Swiss Federal Court with those of the Supreme Court of U.S.A.

Ans. The Constitution of Switzerland provides for a Federal Tribunal, called *Bundesgericht*, for the administration of justice in federal matters. It consists of 24 judges and nine substitute judges, who are elected for a term of six years by the National Assembly. Any Swiss citizen eligible for election to the National Council, irrespective of his legal ability and qualifications, may be elected a judge of the Federal Court, provided he is not a member of the legislature or holder of any other office simultaneously. One of the members of the Tribunal is appointed President and another Vice-President, each for a term of two years but none of them is re-elected for another consecutive term.

Jurisdiction of the Federal Court.

The Federal Court has the jurisdiction to try :—

(1) all civil cases between the confederation and the Cantons ;

(2) between the confederation and corporations or individuals ;

(3) between one Canton and the other ;

(4) between Cantons and the corporations or individuals ;

(5) the Federal Tribunal is to try all cases, involving high treason against the Confederation and revolt against the constitution ;

(6) all cases against the Law of Nations ;

(7) to try all crimes and political offences necessitating the intervention of the Federal Army, and charges against Federal officials.

(8) The Federal Court has also jurisdiction with regard to "conflicts of jurisdiction between Federal authorities of the one party and cantonal authorities of the other party; dispute between Cantons in matters of public law; complaints of violation of the constitutional rights of the citizens and complaints by individuals of violation of concordates and treaties ;"

(9) It functions as an administrative court as well.

Comparison with the Supreme Court of U.S.A.

(1) The Federal Tribunal in Switzerland, unlike the Supreme Court of U.S.A., has no power to declare federal laws as unconstitutional. This is, of course, unusual in a Federation.

(2) The Supreme Court of the United States of America does not function as an Administrative Court, whereas in Switzerland this function is being performed by the Federal Tribunal.

(3) The judges of the Federal Tribunal in Switzerland are elected in a joint session of both the Houses of the Central Legislature. The judges of the Supreme Court in U.S.A., on the other hand, are appointed by the President with the consent of the Senate.

The Supreme Court of U.S.A. which is independent of the legislature and executive, enjoys more prestige and influence because of its power to interpret the constitution and declare laws passed by the Congress as *Ultra-vires*. It has been rightly maintained that in the Swiss Federal Tribunal 'because of its limited power and the mode of election of the judges and their tenure as well as the control of the legislature over the judiciary' the Swiss have failed to establish an impartial and powerful judiciary.

Q. 10. Give an analysis of the composition and powers of the Australian Senate and compare it with the Senate of Canada and U. S. A.

(Agra 1942).

Ans. The Senate in Australia embodies the federal principle of equality of representation of state and, accordingly, it is composed of 60 members, ten from each State. The Senators are elected for a term of six years, half retiring every three years. The House is, thus a continuous body. Members are elected by the people, each state voting as an undivided constituency on the system of preferential voting. Any one who is above 21 years of age, if a natural born subject or naturalised for at least 5 years, and has resided within the Commonwealth of Australia is eligible for election. The House chooses its own President and one third Senators form the quorum. All questions are decided by a majority vote. The President has always a vote but in case of equality of votes, the question is decided in negative.

Powers of the Senate.

The powers of the Senate are co-equal with the House of Representatives except the money bills which must be introduced in the lower house. The Senate has no power to amend the money bills. It can out-right reject them or return them to the lower house with due suggestions of amendments for consideration. In case of deadlock between the two Houses, it is provided that in case a bill is rejected twice, with an interval of three months by the Senate, the Governor-General may dissolve both the Houses and Order for new elections. If the dead lock persists even after re-elections and the Senate again rejects the Bill, the Governor-General may summon a joint session of both the Houses. If the bill is passed by an absolute majority in the joint sitting, it is presented to the Governor-General for his assent. Such an expediency has arisen only once, in 1914.

The law of the Commonwealth is silent on the relative powers of the Senate and the House of Representatives in respect of Control of the Executive. But according to the well established usage the ministry is responsible to the power House alone and the Senate has never attempted to oust it from office.

Comparison with Canada.

1. In the matter of representation, Australia gives an equal representation to all the States, but it is not the case of the Canadian Senate.

2. In Canada the Senators are nominated for life by the Dominion Government, in Australia they are directly elected by the people.

3. The age of eligibility in Canada is 30 years with very high property qualification, making the complexion of the House that of vested interests. In Australia the age of election is 21 years. The latter is, accordingly, more democratic, when there are no property qualifications for the Senators.

4. The provision for resolving deadlocks is also different in both the Dominions. In Canada, in case of a deadlock the Governor-General may nominate 4 to 8 members to the Senate. The procedure in Australia is more democratic. In practice the only occasion when a deadlock has arisen was in 1914.

Comparison with U.S.A.

1. Both in Australia and United States of America the composition of the Senate is identical.

2. In both the countries the Senators are elected directly by the people. But America does not follow the system of preferential voting.

3. Both the Senates are continuous bodies and the members are elected for a period of six years. But in U. S. A. one-third of the members are to be elected after three years. In Australia one half retire after every three years.

4. The American Senate possesses the power to approve all Federal appointments and to ratify treaties. The Australian Senate possesses neither of these powers.

5. The Senate in U. S. A. enjoys judicial powers as well when it sits as a Court of impeachment. The Australian Senate has no such power.

Critical comparative estimate of the Senates

The working of the Senate discloses that it has not succeeded to fulfil the expectations of the framers of the Constitution. It was intended to be a House of talented members and a revising chambers in the real sense of the term. By giving an equal representation to the States it was hoped that the Senate would secure the interests of the States. But both the hopes have been falsified. It has not been able to attract talent as ambitious men have generally preferred the House of Representatives. It has either exercised any moderating influence even in the ordinary legislation, nor has loyalty to the State influenced its deliberations and divisions. Lord Bryce says, "All the expectations and aims wherewith the Senate was created have been falsified by the event. It has not protected State interests, for those interests have come very little into question.....Neither has it become the home of sages, for the best political talent of the nation flows to the House of Commons, where office is to be won in strenuous conflict.....Not having any special functions, such as the control of appointments and of foreign policy, which gives authority to American Senate, its Australian copy has proved a mere replica, and an inferior replica, of the House".

Q. 11. Compare and contrast the Australian Federation with that of Canada and U. S. A.

(Agra 1943).

Australia and Canada.

Ans. Canadian Constitution is characterized to be unitary rather than federal and it is primarily due to the racial, linguistic and religious differences between the north and the south. The fathers of the Canadian Constitution aimed at welding the two parts and obviating,

therefore, all possibilities of mutual conflict. In Australia on the other hand, motives underlying the will to federate hinged upon two obvious desirabilities - economic and defensive. Moreover the units in the Australian federation were self-governing entities, who had no desire to merge their identity. They agreed to federate because they believed in the truthfulness of the old saying that in union there lies strength, keeping at the same time, their individuality intact. In Canada the will to federate did not exist at all. Strong Government was the only motive, which accentuated them to federate and here the framers of the Constitution made virtue of the necessity. The Canadian provinces enjoyed subordinate position prior to the passage of the North America Act, 1867 and they continued as such, even after the Act of 1867 came into operation.

Here are some of the broad but important points of comparison :—

1. The most important difference is with respect to the allocation of powers. In Australia the Centre has been entrusted with certain well-defined powers and the residuary powers rest with the units. In Canada it is just the opposite. Enumerated powers have been given to the units whereas centre is vested with the residuary powers.

2. In Australia the individuality and autonomy of the federating units has been preserved and they are, accordingly, stronger than the Canadian Provinces. Take the following instances :—

(i) In Canada the executive heads of the Provinces are appointed by the Governor-General. In Australia the Governors of the States are appointed by the King.

(ii) The Central Government in Australia has no power to disallow any Act of the State legislature. Only the King can veto them. But in

Canada the Federal Government has full authority to negative any act of the Provincial legislature.

- (iii) The States in Australia are authorized to keep direct relations with the British Government, where-as this direct contact is denied to the Provinces in Canada.

3. The constitution of the Canadian Provinces has been laid down in the North America Act of 1867. The Australian States, on the other hand, are free to adopt their own constitutions, subject, of course, to the Federal constitution.

4. The Canadian Provinces are competent to amend their respective constitutions in any way they like, except office of the Lieutenant Governor.

5. The members of the Senate in Australia are elected by the people and every State has an equality of representation. In Canada the Provinces are not equally represented and the members of the Upper House are nominated for life.

6. Unlike the Supreme Court of Canada, the Australian High Court is the final authority in interpreting the constitution. An appeal may be taken to the Privy Council in England, subject to the grant of leave by the High Court but this leave has never been granted.

7. Unlike Canada, Australia possesses the power to amend the constitution. (For the process of the amendment of the Australian constitution, refer to question 1).

Australia and U. S. A.

The Australian constitution to a great part is akin to the U. S. A. model. Both the countries are the result of autonomous units, who aimed at union for economic and defence purposes. Following are the points of similarity:—

1. In both the federations the division of powers is identical and the residuary powers rest with the units.

2. Both the constitutions secure equal representation for the States in the Senate.

3. Like the Supreme Court of U.S.A., the Australian High Court is the final authority to interpret the constitution.

In spite of these points of similarity, there are important differences between the two federations :—

(a) U.S.A. has a Presidential form of Government, whereas Australia has adopted the Parliamentary form of Government—the model of the mother country.

(b) According to the Australian constitution the States can delegate some of their functions to the federation. But there is no provision, as such, in the American constitution.

(c) The Senate in Australia, unlike the Senate of U.S.A., does not possess the power to ratify treaties or share with the executive the power of appointments.

(d) In Australia both the federal and the State Courts exercise jurisdiction in federal as well as local matters. But in the United States of America the Courts of the States are not competent to exercise any jurisdiction over the federal laws.

(e) The constitution of U.S.A. contains a Bill of Rights, but it is conspicuous by its absence in the Australian constitution.

Q. 12. Compare the Swiss Federal System with the Federal System of U.S.A. (Agra 1946)

Ans. The Swiss Constitution is federal in character. There is a central or national Government set up by the constitution, possessing legislative, executive and judicial organs. The National Government exercises certain amount of its powers directly over the whole country and

its people. The Swiss Federation also consists of 19 full cantons and six half cantons. All the cantons and half cantons are sovereign so far as their sovereignty is not restricted by the Federal constitution. They are free to exercise all the rights and powers which have not been transferred to the Federal Government. The Swiss Federation thus is a union of autonomous units. It is indestructible as well. Thus in name at least the Swiss Federation bears a resemblance with the American Federation.

Let us now see at close quarters as follows how the Federal principle has been worked out in Switzerland.

(a) The supremacy of the constitution.

The Swiss constitution protects both the Federation and the cantons in the exercise of their respective rights. It is presumed to be the sovereign expression of the will of the people of the entire federation and of the cantons. One might, therefore, expect it to be the supreme law of the land, supreme over both the Federal Government and the Governments of cantons in the same way in which the constitution of the U. S. A. is supreme. This sort of supremacy no doubt exists. But the means of enforcing it are not so perfect as in those of U.S.A. In America the Supreme Court protects the constitution by its power of judicial review. It can refuse to enforce any law made by the Congress or by any State legislature if it is found to violate any provision of the constitution. The Swiss Federal Court, the highest court of justice in the Swiss Republic, possesses this power of judicial review only to a very limited extent. It can no doubt vindicate the supremacy of the Swiss constitution against any provision of the cantonal laws or administrative acts of a canton, which come into conflict with the provisions of the constitution. But it has no similar power in regard to any act passed by the Federal legislature. This is so because like the British constitution, the Swiss constitution rests upon the theory of the supremacy of the legislature. In America, as already noted, the Supreme Court is the

guardian and custodian of the constitution but it is not so in Switzerland. Naturally, therefore, in Switzerland the supremacy of the constitution is less secure than in America.

(b) The distribution of powers.

In Switzerland the distribution of powers between the federal government and the Governments of the Cantons followed the American model to a large extent. The federal government enjoys exclusive powers in regard to the following :—

- (i) Control of foreign affairs, despatch and reception of diplomatic representatives, declaring of war, conclusion of peace and treaties ;
- (ii) Army ;
- (iii) Posts, telegraphs, telephones and Railway services ;
- (iv) Currency, banking, issue of paper money, and
- (v) regulation of commerce and the levying of custom duties. It cannot levy direct taxes on the people. But it can control all water, power production of alcohol. It has concurrent powers in relation to the control and regulation of industry and insurance, press, education and high-ways. In cases of conflict in the concurrent field between the cantonal and federal law the law of the latter prevails as against the former.

In the field of administrative powers the Swiss constitution is different from all other federal constitutions. Majority of the federal laws are operated by Cantons while the federal officers content themselves with only inspection and supervision. This is not so in U. S. A. In the field of foreign affairs, collection of customs and duties, telegraphs, telephones and postal services, however, the federal officers execute the laws.

With this difference, the scheme of the distribution of powers both in Switzerland and America is the same

in broad out-lines. The principle of 'Enumeration and Residuum' has been followed. The powers of the Centre are enumerated. The residue (the remaining powers) has been assigned to the Cantons. Like America in Switzerland also subjects of national importance are assigned to the centre and of local importance to the Cantons. It is also to be noted that in both countries there is a growing tendency towards the centralisation of authority in the hands of the National Government. In Switzerland one writer has gone to the extent of remarking that the Swiss Constitution "really erects the confederation in some measure into a tutor and inspector of the cantons". The critic is wrong if he means by this statement that central governments have become or are becoming dummies in the political game. Cantonal governments form the very basis of democracy in Switzerland. They control important subjects like education, maintenance of domestic peace and order, construction of local public works and roads, direct taxation, judicial procedure etc. What is even more important, is that Swiss citizenship is left to the Cantons by virtue of the clause that 'every citizen of a canton is a Swiss citizen'. Furthermore, each one of the Cantons is as much a political laboratory for experiments in democracy as the confederation itself. Not only this, the Cantons operate the federal laws in a spirit of independence and co-operation. In fact as Bounjour has put it, "the Cantons and half-Cantons are all so many small nations animated by a ceaseless desire to perfect their political organization and to develop their democratic institutions".

(c) The supremacy of the judiciary.

The Swiss Constitution provides for the establishment of a Federal Tribunal as well. But it has no power to declare the federal laws as unconstitutional. This means that, theoretically speaking at least, the Cantons are without a remedy against encroachments on their powers by the Federal government. This is not so in America.

It will be obvious from the aforesaid that the Swiss federal scheme is both similar and different from rather more different than similar to the American Federal Scheme.

Q. 13. Compare and contrast the United Kingdom, the United States and France from the point of view of the political importance of their party system upon their forms of Government.

Ans. United Kingdom.

In the United Kingdom, "Party works inside rather than outside the governmental system; speaking broadly, the machinery of government are one and the same thing." The leader of the majority party in the House of Commons, who forms the Cabinet, is also the executive head of the party in power. In the parliament itself against the party in power stands the opposition, which is the prospective government whenever the majority party is ousted from office. Thus it is the party system, which is working out the parliamentary form of government. The government is merely an organ through which the party expresses itself

There are three parties in England, the Conservative, the Liberal and the Labour. The Conservative party includes most of the nobility, the landed aristocracy, most clergymen of the established Church, old Tories, business magnates with imperialistic outlook, militarists, bankers, manufacturers and others. The membership of the Liberal party is drawn from the professional and business classes, from the so-called "middle-class," small manufacturers, shop-keepers, agriculturists nonconformists in faith and largely from the wage-earners. But with the rise of Labour party, the Liberals have lost a large number of their supporters. Dr. Munro has rightly remarked that "Labour has cut more heavily into the Liberal than into the Conservative rank." The Labour party embraces all classes of people-scholars, writers, dramatists, artists, lawyers, clergymen and even employers of labour equalling with the workmen of factory shop and firm.

The names Conservative and Liberal are illusory. The Conservatives have sometimes championed reforms which were opposed by the Liberals. There may have been occasions when the conservative party justified its name, but it cannot be contended that it has always been opposed to progress. The Conservatives are also reformers, but as one of the Conservative leader, Lord Cecil remarked, they are "cautious and circumspect reformers." The programme of the Liberal party had been 'reform' and 'innovation, in all spheres of life and they have always favoured free trade, the policy of *laissez faire* both in the economic and political field. But recently they have given up the extreme individualistic policy.

Since 1907 the programme of the Labour Party has become Socialistic in principle. The Party aims at legislation favourable to the working class, economic democracy, "Socialisation of the means of production, distribution and exchange, complete emancipation of labour from the domination of capitalism and landlordism." All these measures are to be brought about gradually according to their success at the polls.

The Parties in England are nation-wide organizations. Each party has its office in London and the headquarters keep in close touch with the local associations of all the constituencies. In each polling district of Parliamentary constituency members are affiliated to be the active adherents of a party. This body elects representatives to a Party council of the whole constituency and from this constituency council, representatives are sent to the county or borough council. Finally, the last council elects representatives to the central body at London. The party leaders in the central office, who usually hold office in Parliament or cabinet dictate the policy of the party by "Open letter" or addresses and formulate its platform. On the approach of an election, they raise funds for election campaigns, provide speakers to the constituencies where necessary, recommend names of the party candidates.

United States of America

In the United States the party system is a different organization altogether. Unlike England it stands outside the governmental machinery having its separate committees, conventions and platforms. Although grown outside the frame-work of government, the parties in the United States exercise considerable influence over the Government. It serves to act as bonds of union between the executive and the legislative parts of government by controlling them both. It influences the executive by controlling official elections and the legislature by discussing legislative measures in party caucuses and communicating decisions to their representatives in the committees. It also avoids deadlocks in legislature by exerting influence from outside. In the United States it is the party which dictates its policy to the Government. In England it is the Government through which the party expresses itself.

A party in the United States is highly organized. It serves because of the complete divorce of the executive and the legislative powers, as a bond in the shape of party organization. Moreover, without proper organization the election of the President or a governor is impossible due to the vast extent of the territory. The scheme of the party organization is as follows :—

1. Each party is held together by a series of committees and conventions. In every district a meeting of the party adherents is held for the selection of candidates. This meeting is called the "primary" or "caucus." Its function is to appoint the local standing committees, nominate party candidates for election, and send delegates to the party meeting of a next large unit.

2. This meeting or "convention" as it is called, similarly appoints a committee, makes nomination for office and sends delegates to the State convention.

3. This body again nominates candidates for the governorship etc, appoints the State party committees, and sends candidates to the National Convention held once in four years.

4. The National Convention is held for the selection of the President of the United States out of the party candidates. The national convention of each party consists of as many delegates as it has members in Congress together with delegates from its dependencies. The convention, thus, forms the national platforms of the party, and makes its nomination for presidency.

The highly organized and complex party organization in the United States has opened the way to many abuses. The primary falls totally under the control of professional politicians and their hangers on. This gives rise to the "party ring" and the "party boss" which serve as instruments of party control. The ordinary citizens are indifferent and stay away from attending the party primary. The nature of the party machine, therefore, repels the honest and attracts the unscrupulous. The entire party system is controlled by machines, bosses and conventions.

France

France has a parliamentary form of Government as there exists in England. But she is handicapped from operating the governmental machinery on account of the multiplicity of parties and party groups. French Cabinets are always coalition Cabinets. They are the result of compromise and susceptible to break down on the slightest deviation from the policy. Except for the socialist group none of the parties in France have a regular organization national committees, campaign funds, party platforms or party machine. Thus, there is no recognized leader of a majority party as the British House of Commons. The Deputies, in most of the groups, follow their leaders so long as it suits them to do so. For all these reasons the Government in France is not stable. Frequent changes in government lead to dislocation of business.

Q. 14. Analyse the salient features of the Constitution of the Union of South Africa and compare it with Canada.

Ans. The Union of South Africa is governed by the Act of 1909, which combined the four colonies. The

preamble states that "the several British colonies therein be united under one Government in a legislative union under the crown of Great Britain and Ireland." The "legislative Union" is a curious mixture of federal and unitary elements but all told the union is generally unitary in spirit.

Federal Elements.

1. The provinces have been given certain subjects of administration and the provincial legislatures can make laws or ordinances as the laws are there called. The provincial subjects are direct taxation, education, other than higher education, agriculture, hospitals, charitable and municipal institutions etc. In the preamble itself there is a mention of making "provision for the establishment of provinces with powers of legislation and administration in local matters and in such other matters as may be specially reserved for provincial legislation and administration."

2. The provinces are given equal representation in the centre of the union *viz.* eight members each.

3. In the constitution of the federal cabinet all care is taken to give representation, as far as practical, to all provinces.

4. The provinces have also "received recognition in the allocation of federal business. Cape Town has been fixed as the seat of legislature, Pretoria that of the executive Government and Bloemfontein that of the Supreme Court.

5. Dutch and English have both been recognized as official languages in which all official records are printed.

Unitary Elements.

1. In a federation there is a division of powers between the federating units and the newly created centre, both remaining independent within their respective jurisdiction. In a unitary Government the units do not

enjoy any inherent and independent power. Their power is a delegated one to be exercised at the option of the centre. It is true that in the union of South Africa the provinces have been given "powers of legislation and administration in local matters and in such other matters as may be specially reserved for provincial legislation and administration," but these are:—

- (i) subject to the assent of the Governor General ;
- (ii) provided such laws are not inconsistent with the Acts of the Union Parliament ;
- (iii) the Union Parliament may also pass laws on the subjects within the provincial sphere and the precedence would be given to the Union laws over the prevailing laws of the provinces.

2. The Chief executive head of the province, who is styled as Administrator, is appointed by the Governor-General in Council, and "the conditions of appointment, tenure of office and retirement of public officers within the province may be regulated by the Union Parliament.

3. The Union Parliament can amend the constitution with the exception of certain provisions of the Act, in the ordinary method of legislation as if an ordinary law is being made or amended.

4. The exceptions themselves are subject to amendment by the Parliament provided the amendment is passed by both Houses of Parliament, sitting together, and at the third reading is agreed to by not less than two-thirds of the total number of members of both Houses.

5. Legally, the Union Parliament is competent to abolish the provincial legislature or reduce their power. Even the provision in the Act of 1909 that such an abolition or reduction should be reserved for the King's pleasure was repealed in 1934. This was, however, remedied by passing of Act No. 45 of 1934 that the Union Parliament was not to abolish any Provincial Council or

abridge their powers except on the petition to Parliament, of the Council affected.

Comparison with Canada.

1. In both Countries—South Africa and Canada, provinces have limited jurisdiction ;
2. But unlike South Africa Canadian Provinces are autonomous units whose constitutions cannot be amended by the federal legislature.
3. The heads of the Provincial executive in both the countries are appointed by the Governor-General.
4. In Canada, it is not necessary that the Provincial laws should receive for their validity the assent of the Governor-General.
5. The Governor-General of the two Dominions can, of course, veto the Provincial legislation, but this has come into abeyance in Canada now.
6. The Dominion Parliament of Canada cannot pass legislation on the provincial subjects, whereas in South Africa it is possible.
7. The power and position of the Canadian Provinces has now considerably increased as a result of the established conventions and judicial decisions.

Conclusion.

From the out-line of the above broad facts it shall be clear that the Constitution of South Africa is a curious admixture of federal and unitary elements. But federal elements pale down to insignificance in the dominating presence of unitary tendencies. A constitution which does not accede to its units autonomy within its own sphere of activity and gives to the units only delegated power cannot claim to be a federation even by name. In South Africa the Constitution is not even the custodian of the State rights and their integrity "the supremacy of the Constitution, as distinguished from that of the central Africa. Cons-

stitution is dependent upon the freaks of the Union Parliament.

Q. 15. "The relation of the Swiss Ministers to the legislative body is different from that which exists in any other country". Explain and discuss fully.
(Agra 1940, 1944)

Ans The relations existing between the executive and the legislature are unique in Switzerland. These are dissimilar to the relations which exist between these two organs both under parliamentary and the presidential forms of government. Describing this unique nature of relationship, Bryce writes, "The Council is not a Cabinet, like that of Britain and the countries which have imitated her Cabinet system, for it does not lead the legislature and is not displaceable thereby. Neither is it independent of legislature, like the executive of U. S. A. and of other Republics which have borrowed therefrom the so-called Presidential System and "yet" it has some of the features of both these schemes."

The relation of the executive with the Legislature bears some resemblance to the English Cabinet system in the following respects :—

(a) The executive in Switzerland is in a sense the committee of the Legislature chosen by it to exercise the executive functions.

(b) Each member of the executive is the head of an administrative department.

(c) The executive councillors may occupy seats in both chambers of the legislature and may make motions heard but cannot vote.

(d) They may be interpellated regarding their official deeds and policies. They are thus largely subject to the control by the Legislature.

(e) They formulate and prepare drafts of all important legislative measures, including the Budget, introduce them

into the legislature and advocate their enactment into a law.

But here the current of similarity stops. And one notices the following sharp differences with regard to the nature of relationship existing between the legislature and the executive in the two countries :—

(a) Though the Swiss Federal councillors can be members of either branch of the Federal Assembly, they have to resign their seats after being elected.

(b) The executive Councillors do not possess the powers which Ministers in most parliamentary States have—that is—the power to dissolve the Legislature or one chamber of it and appeal to the electorate when they believe that they, rather than the Legislature, represent the nation's will.

(c) The interpellations are not followed by votes of approbation or censure.

(d) The members of the executive are not responsible to the legislature in the sense that they must resign when they lose its confidence or when the measure or policies which they advocate are altered or rejected. Instead the executive is fixed here for four years. Here the Swiss Cabinet differs from the Cabinet type and resembles the American type in its fixity, though differing from it fundamentally in its irresponsibility to the Legislature.

This difference of relationship between the executive and the Legislature in Switzerland and other countries is due to the following two facts.

(a) The Swiss theory of the responsibility of the executive to the Legislature is based on an entirely new principle. According to them the executive is not an independent branch of Government, co-ordinate with the legislature, but the servant of the latter both in theory and practice. This is so in England only in theory. In practice the Cabinet directs and controls the House of Commons. But in Switzerland the executive has to carry out the verdict

of the Federal Assembly. It is worth noting here that when the Federal Council exercises its powers relating to the conduct of foreign relations, the armed forces, even the conduct of ordinary administration it has to obtain the previous consent or the subsequent ratification of the Assembly. The Assembly issues directions in the shape of resolutions—'postulates'—indicating the way in which the Council is to discharge its functions. Thus when the Federal Council implicitly follows the directions of the Legislature, why should the Legislature lose confidence in the executive?

(b) Secondly the Swiss people believe that it is irrational not to have difference of opinion. They feel that as the executive mostly carries the biddings of the Legislature, there is very little possibility to have difference of opinions about fundamentals of State policy. And, the Swiss people believe, as Bryce puts it, "Where differences are not fundamental or do not touch the departments a particular Minister deals with, why lose your best servant because he does not agree with you on matters outside the scope of his work. As well change your physician because you differ from him in religion."

Thus, through a system of unique relationship between the executive and the legislature, the Swiss people have combined responsibility with stability. This "enables proved administrative talent to be kept in the service of the Nation, irrespective of the personal opinions of the Councillors upon the particular issues which may for the moment divide parties." (Bryce).

